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FEDERAL COMMUNICATIONS COMMISSION REPORTS
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FEDERAL COMMUNICATIONS COMMISSION

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INDEX

	Page
Alabama Educational Television Commission; docket No. 19422 et al. (F.C.C. 73R–51)	123
Applications—Safety and Special Services; docket No. 19484 (F.C.C. 73–114)	124
Cable TV Performance Tests; re extension of time for compliance (F.C.C. 72–1147)	126
Channel 13 of Las Vegas, Inc.; forfeiture (F.C.C. 73–100)	128
Communications—Interstate or Foreign Facilities et al.; docket No. 19117 et al. (F.C.C. 73–132)	131
Cox-Cosmos, Inc.; file No. CTAX–6 (F.C.C. 73–91)	138
Electronic Futures, Inc.; petition by HC Electronics, Inc. re wireless auditory training microphones (F.C.C. 73–86)	141
Empire Communications Co. et al.; docket No. 19301 et al. (F.C.C. 73R–52)	143
Erwin O'Conner Broadcasting Co. et al.; docket No. 18547 et al. (F.C.C. 73R–48)	146
FM Table of Assignments; docket No. 19533 (F.C.C. 73–99)	147
FM Table of Assignments; docket No. 19613 (F.C.C. 73–127)	150
Frequency Pair—451.800/456.800 MHz; docket No. 19673 (F.C.C. 73–88)	152
General Electric Cablevision Corp.; file No. CAC–731 (F.C.C. 73–90)	156
General Electric Cablevision Corp.; file No. CAC–550 (F.C.C. 73–92)	158
Harvest Radio Corporation; docket No. 18852 (F.C.C. 73R–49)	160
Lankford Broadcasting Co. et al.; docket No. 18637 et al. (F.C.C. 73R–44)	161
Local Government Service Mobile Stations; docket No. 19672 (F.C.C. 73–87)	164
Magic Valley Cable Vision, Inc., et al.; file No. CSR–223 et al. (F.C.C. 73–94)	166
Metro Cable Co.; file No. CAC–247 et al. (F.C.C. 73–89)	169
Mid-Michigan Broadcasting Corp.; file No. BP–19328 et al. (F.C.C. 73–112)	173
Mid-Texas Communications Systems, Inc.; file No. CCTAX–1–73 (F.C.C. 73–118)	175
Salem Broadcasting Co., Inc. et al.; docket No. 19434 et al. (F.C.C. 73R–61)	178
Section 315 Ruling; complaint by Charles O. Porter, Esq. against KVAL–TV, KEZI, and KPNW (F.C.C. 73–130)	179
South Carolina Educational Television Commission et al.; docket No. 18569 et al. (F.C.C. 72R–400)	180
South Carolina Educational Television Commission et al.; docket No. 18569 et al. (F.C.C. 71D–19)	191
Southern Broadcasting Co. et al.; docket No. 18906 et al. (F.C.C. 73R–60)	268
Southland, Inc. et al.; docket No. 19415 et al. (F.C.C. 72D–66)	270
Stark County Communications, Inc.; File No. CAC–1007 et al. (F.C.C. 73–103)	274
Stephenson, Harry D. and Robert E., et al.; docket No. 18385 et al. (F.C.C. 73–85)	279
Tele-Ception of Winchester, Inc.; docket No. 19358 (F.C.C. 73R–50)	280
Tele-Ception of Winchester, Inc.; docket No. 19358 (F.C.C. 72D–20)	282
Tri-Cities Cable Co., Inc.; file No. CAC–798 (F.C.C. 73–53)	286
Village CATV, Inc.; file No. CAC–920 et al. (F.C.C. 73–93)	288
Western Union Telegraph Co., The; docket No. 19267 (F.C.C. 72–1126)	290
W.M.E.D. Associates, Inc. et al.; file No. BP–19083 et al. (F.C.C. 73–111)	292
WHJB, Inc.; docket No. 18868 (F.C.C. 73R–53)	296
WHJB, Inc.; docket No. 18868 (F.C.C. 71D–57)	318
WIOO, Inc. et al.; docket No. 19468 et al. (F.C.C. 73R–45)	351
WOIC, Inc.; docket No. 19674 (F.C.C. 73–106)	355

F.C.C. 73R-51

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ALABAMA EDUCATIONAL TELEVISION COMMISSION, MONTGOMERY, ALA. ET AL. For Renewal of Licenses and for License to Cover Construction Permit	Dockets Nos. 19422-19430 Files Nos. BRET-69, BRET-5, BRET-7, BRET-14, BRET-87, BRET-130, BRET-147, BRET-109, BLET-267

ORDER

(Adopted January 26, 1973; Released January 31, 1973)

BY THE REVIEW BOARD:

1. Before the Review Board is the application for review (appeal from ruling of Presiding Judge), filed on November 17, 1972, by Linda Edwards, Eugene Farrell and Steve Suitts, and responsive pleadings;
2. IT APPEARING, That, as petitioner recognizes, said appeal is prohibited by the Commission's Rules (Section 1.301(b)), and is premature absent a waiver of said Rules; and
3. IT FURTHER APPEARING, That petitioner has not informed the Review Board that such a waiver has been obtained;
4. IT IS ORDERED, That the above application for review IS DISMISSED without prejudice to refiling if a proper waiver is obtained.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-114

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 0, 1, 81, 87, 89, 91 AND 93 OF THE COMMISSION'S RULES RELATING TO THE TIME IN WHICH APPLICATIONS, AND AMENDMENTS THERETO, OR PETITIONS TO DENY APPLICATIONS, MAY BE FILED IN THE SAFETY AND SPECIAL RADIO SERVICES	Docket No. 19484

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 5, 1973)

BY THE COMMISSION:

1. We have under consideration a timely filed Petition for Reconsideration by Aeronautical Radio, Inc. (ARINC) of our Report and Order in this Docket released July 11, 1972. ARINC asserts that our processing and public notice procedures for Aviation Service applications requiring public notice pursuant to Section 309(b) of the Communications Act do not meet those statutory requirements.

2. Specifically, ARINC's petition is directed to applications that are returned to an applicant for minor amendment and are then resubmitted. Under current rules, no further public notice would be required. It asserts that this procedure may in some instances, deprive a person of a reasonable opportunity to file a petition to deny an application. ARINC's position is that when an application is returned to an applicant, it is not "on file" during the period the application is not physically in the Commission's files and cannot be examined by a member of the public for purposes of determining whether to file a petition to deny. ARINC further argues that if the application is then resubmitted to the Commission shortly before the expiration of the 30 days public notice period, an interested party would not ordinarily know that it has been resubmitted and even if the resubmission is known, insufficient time may remain in the 30 day public notice period for the party to examine the application and file a timely petition to deny within 30 days after public notice specified in the new Section 1.962(g) of the rules. ARINC asserts that the Common Carrier and Broadcast Bureaus place on public notice all applications that have been returned to an applicant, and also all applications resubmitted to the Commission regardless of the degree to which the applications have been modified; i.e., substantial or minor modification. ARINC's position is that the Safety and Special Radio Services Bureau could follow this procedure without any unreasonable administrative burden, and that the Bureau should do so.

3. We agree in substance with ARINC and we will grant it the requested relief by amending Section 1.962(e) of the rules to provide that all applications subject to that section, that have been returned to an applicant and resubmitted to the Commission will be placed on public notice when returned to an applicant and on a new public notice upon being resubmitted to the Commission.

4. Accordingly, the Petition for Reconsideration of ARINC filed August 10, 1972, IS GRANTED to the extent indicated herein.

5. IT IS ORDERED, That pursuant to the authority contained in Section 4(i), 303(r) and 309(d)(1) of the Communications Act of 1934, as amended, Part 1 of the Commission's rules IS AMENDED, effective March 16, 1973, as set forth in the attached Appendix.

6. IT IS FURTHER ORDERED, That the proceeding in Docket 19484 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Section 1.962(e) of the rules is amended as follows:

§ 1.962 *Public Notice of acceptance for filing; petitions to deny applications of specified categories.*

* * * * * * *

(e) The Commission will issue at regular intervals a "Public Notice" listing all applications subject to this section which have been accepted for filing, or have been returned to an applicant for correction, within the 30 day public notice period. Such "Public Notice" will re-list any application which has been amended substantially since its previous listing, or which has been resubmitted to the Commission, after public notice of the return of the application to an applicant, pursuant to Section 1.959 of the rules. For the purposes of this section, "accepted for filing" means that an application has been received at the Commission with the required filing fee, if any. Such acceptance for filing shall not preclude the subsequent dismissal of an application, pursuant to the provisions of this chapter, as being defective.

F.C.C. 72-1147

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
PETITIONS FOR AN EXTENSION OF TIME FOR INITIAL COMPLIANCE WITH SECTION 76.601 OF THE RULES

MEMORANDUM OPINION AND ORDER

(Adopted December 13, 1972; Released December 18, 1972)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE CONCURRING IN THE RESULT.

1. Section 76.601(c) of the Commission's Rules requires the operator of each cable television system to conduct complete performance tests of that system at least once each calendar year (at intervals not to exceed 14 months). The performance tests are intended to determine the extent to which the system complies with all the technical standards set forth in Section 76.605 of the Rules. Section 76.601(c) became effective on March 31, 1972 and, therefore, the first performance tests are required to be conducted by December 31, 1972.

2. On September 22, 1972, the National Cable Television Association (NCTA) filed a petition requesting that the compliance date be postponed until December 31, 1973. NCTA explained that there is much uncertainty within the industry concerning the appropriate methodology for performing the tests, a present scarcity of appropriate testing equipment, and too few qualified engineering consultants to conduct the performance tests. NCTA further noted that for smaller systems the testing program has represented a particularly burdensome expense.

3. By Public Notice of October 16, 1972, interested parties were requested to comment on this matter to provide the Commission further insight into the problems resulting from the performance test requirement of Section 76.601(c) and on the advisability of postponing for some period the date for compliance. We received comments (many of which requested an extension of the deadline) representing a substantial portion of the cable television industry, two engineering consulting firms, and the Association of Maximum Service Telecasters (AMST).

4. Based on the information we have received, there is little doubt that the necessity of complying with Section 76.601(c) is causing many problems throughout the cable television industry. It was expected that some difficulty would inevitably result from our new rules. But as

AMST has noted, cable systems have been on notice for more than a year that they would have to conduct performance tests and industry efforts to prepare for compliance very possibly could have been more strenuous. The fact is, however, that the industry on the whole cannot meet the requirements of Section 76.601(c) by the end of this year. Clearly, some further amount of time is needed for dissemination of testing techniques, acquisition of equipment, and training of engineers. We expect that when these problems are addressed, cable operators will discover that the testing requirement need not be quite as burdensome and expensive as they believe it to be. It is noted that systems that were in operation before March 31, 1972 do not have to comply with the technical standards of Section 76.605 until 1977; however, systems that began operation after March 31, 1972 are required to comply with Section 76.605 upon commencement of service. We shall, therefore, postpone the deadline for complying with the performance tests requirement of Section 76.601(c) for one year, until December 31, 1973, for cable systems that were operative by March 31, 1972.

Accordingly, IT IS ORDERED, That the final date for initial compliance with the cable television performance tests of Section 76.601(c) is POSTPONED until December 31, 1973, for all cable systems that were in operation on March 31, 1972. Other provisions of Section 76.601 shall remain in effect.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-100

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of LIABILITY OF CHANNEL 13 OF LAS VEGAS, INC. LICENSEE OF STATION KSHO-TV, LAS VEGAS, NEV. For a Forfeiture	)

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 30, 1973)

BY THE COMMISSION:

1. In *Channel 13 of Las Vegas, Inc.*, 37 FCC 2d 518, 25 RR 2d 296 (1972), we ordered Channel 13 of Las Vegas, Inc. (KSHO-TV), licensee of Station KSHO-TV, to forfeit $10,000 for violations of Section 317 of the Communications Act and of Sections 73.654 and 73.1205 of our Rules. Now under consideration is KSHO-TV's application for mitigation or remission of the forfeiture, filed October 24, 1972.

2. The basis for the forfeiture can be briefly stated. KSHO-TV is an affiliate of the ABC television network. The station did not broadcast all of the material provided by the network and often joined network programs late, expanded commercial breaks, or left the network program before its conclusion. In many instances, the material deleted at the end of the program included the statements or "crawls" that disclose the receipt of payment for the use of promotion of merchandise or services on the program.[1] Accordingly, KSHO-TV was cited for violating Section 317 of the Communications Act and Section 73.654 of our rules as to sponsor identification. KSHO-TV's contract with the network obligated the station to broadcast network sponsored programs "without interruption or deletion or addition of any kind," unless otherwise noted in the statement sent to the network. KSHO-TV nevertheless certified to the network that the programs were broadcast in their entirety. Since the "crawls" clipped at the end of the program are classified as advertising, KSHO-TV was also cited for violating Section 73.1205 of the Rules.

3. In its application for mitigation or remission, KSHO-TV restates its contention that Section 73.1205 of our Rules does not apply to its conduct. For the reasons set out in our prior decision, we believe that clipping network programming, while certifying to the network that the programming was carried in its entirety, violates Section 73.1205 when the clipped portions contain advertising. KSHO-TV also reasserts that it lacked adequate notice that its conduct would violate Section 73.1205. We repeat that the ruling that "crawls" constitute commercial matter was made on December 16, 1970, which falls before

[1] A description of such "crawls" and pertinent Commission decisions pertaining to them are set out in our prior decision in this matter, cited above.

the dates set out in the Notice.[2] KSHO–TV had constructive notice at that point. While KSHO–TV may not have had actual notice, or may not have thought through the ramifications of the ruling, we hold licensees to a high degree of responsibility as to the requirements of our rules and our interpretations of them.

4. KSHO–TV asserts that we have not established that the clipped material was required for purposes of sponsor identification. If an equivalent identification was made during the course of the program, KSHO–TV argues that the identification in the "crawl" at the end of the program was not required. As noted in our prior decision, in reaching the conclusion that the announcements were required for sponsor identification purposes, we relied on the statement of ABC that on those days indicated where KSHO–TV had clipped the entire "crawl" that, as to specified prizes, ". . . the announcement that a fee had been paid in addition to the donation of the prize itself was made solely at the end of the program in the disclosure announcement. No disclosure occurred during the body of the program . . ." It is KSHO–TV's position that since we have not examined the scripts or tapes of the programs in question, we cannot conclude that the necessary sponsor identification was not presented in the body of the program. Moreover, KSHO–TV contends that this "deficiency" violates Section 503 of the Communications Act.[3] [4]

5. We can agree with KSHO–TV that it would be preferable if we had video tapes or films of the particular programs in our possession for review. But the lack of one kind of evidence to establish a violation does not mean that all other evidence must be ignored. Here we have KSHO–TV's concession that it clipped the network material set out in our Notice of Apparent Liability. On ten of the days cited, KSHO–TV clipped the entire sponsor identification "crawl." ABC has stated as to specified products used on the programs that no sponsor identification was broadcast during the body of the particular crawl, only during the "crawl." We believe that this is strong, clear evidence of failure to give sponsor identification, and meets the requirements of Section 503 of the Act.

6. KSHO-TV also states that on the basis of the information contained in the Notice of Apparent Liability and in our prior decision, it is unable to determine whether the *proviso* clause of Section 317 of

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[2] As noted in our prior decision, we have previously imposed forfeitures under Section 73.1205 for issuing false certificates to networks. See *Letter to Wake County Broadcasting Company (WAKS)*, FCC 70–780 (July 15, 1970); *Letter to Chapman Television of Tuscaloosa, Inc. (WCFT–TV)*, FCC 70–1197 (November 4, 1970). It cannot be said, therefore, that our action here in applying Section 73.1205 to certifications issued to networks by a station is arbitrary. *Radiozark Broadcasting of Louisiana*, 32 FCC 2d 603 (November 29, 1971), cited in our prior decision, also applies Section 73.1205 to certifications to networks, but, as noted by KSHO–TV, was issued after the events considered here.

[3] Section 503(b)(2) provides in part:

"A notice issued under this paragraph shall not be valid unless it sets forth the date, facts, and nature of the act or omission with which the licensee or permittee is charged and specifically identifies the particular provision or provisions of the law, rule, or regulation or the license, permit, or cease and desist order involved."

[4] KSHO–TV also states that it has never seen the letter from ABC that contains the statement relied upon. Since the letter was excerpted in our previous decision, we see no prejudice to KSHO–TV. In any event, the staff of the Complaints and Compliance Division, where such matters are processed, recalls no request to inspect the letter. A copy of the letter is in the station's complaint file, which is available for public inspection at the Commission upon request.

the Act is applicable.[5] Since the companies in question that provided prizes used on the cited quiz shows paid to have their products used, the situation falls clearly within the first clause of Section 317(a)(1). The *proviso* clause is applicable only in situations where services or merchandise are provided free to the station, or where the *station* pays a nominal charge for them.

7. KSHO–TV asserts that its conduct was not willful within the meaning of Section 503(b) of the Act. However, KSHO–TV knew that it was not carrying the entire network sponsored programs. Nonetheless, it certified that the programs were carried in full.[6] It is not necessary to show that it knew that its conduct violated any rule or statute in order to show willfulness. See *Didrickson* v. *FCC*, 254 F.2d 354 (1958), and the cases cited there. In our view, KSHO–TV's conduct was willful within the meaning of Section 503(b) of the Act.

8. Finally, KSHO–TV argues that the amount of the forfeiture is disproportionate in reference to subsequent forfeitures imposed against other stations for network clipping. KSHO–TV notes that we imposed a $4,000 forfeiture against Station KLAS–TV, FCC 72–697 (July 26, 1972) and a $5,000 forfeiture against Station KFSA–TV, FCC 72–502 (June 9, 1972). KSHO–TV concludes that the $10,000 forfeiture assessed against it is arbitrary and capricious. However, Section 503(b)(1) of the Act limits the amount of forfeiture to $1,000 for each day during which a violation occurs and Section 503(b)(3) limits the amount to a total of $10,000, and states that no forfeiture liability shall attach for any violation more than one year prior to the issuance of the notice of apparent liability. Both KLAS–TV and KFSA–TV were fined the maximum amount permissible under the statute for violations occurring within the statute of limitations. The difference in the amount of the forfeiture flows solely from the limitations set out in the statute, not from arbitrary or capricious actions on our part.

9. In view of the above, we are not persuaded to mitigate or remit the forfeiture.

10. Accordingly, IT IS ORDERED, That the application for mitigation or remission of forfeiture filed October 24, 1972, by Channel 13 of Las Vegas, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[5] Section 317(a)(1) states:
"All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That 'service or other valuable consideration' shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast."

[6] The certifications to the network stated:
"Everything carried according to schedule except as noted in the interruption, deletions, cancellation or preemption column above. In the event any of the programs were not carried in their entirety for any reason not stated herein, payment to the station for such program or programs shall be waived."
For the programs noted in the Notice of Apparent Liability, KSHO–TV did not indicate any "interruption, deletions, cancellation or preemption" in the appropriate column in its certifications to the network.

F.C.C. 73–132

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of ESTABLISHMENT OF RULES PERTAINING TO THE AUTHORIZATION OF NEW OR REVISED CLASSIFICATIONS OF COMMUNICATIONS ON INTERSTATE OR FOREIGN COMMON CARRIER FACILITIES AND AMENDMENT OF PART 63.60–63.90 OF THE RULES	Docket No. 19117
In the Matter of the Application of AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. For Authority Under Section 214(a) of the Communications Act of 1934, as Amended, To Supplement Existing Facilities Between Various Locations Throughout the Continental United States and to Canada and Mexico To Be Undertaken During 1971 and 1972.	File No. P–C–7825
In the Matter of the Application of PIONEER-UNITED TELEPHONE CO. For Certification, Under Section 214(a) of the Communications Act of 1934, as Amended, of the Construction and Operation of Proposed Wide-Band Telecommunications Facilities in the Community of Jonathan, Near Chaska, Minn.	File No. P–C–7954

REPORT AND ORDER

(Adopted January 31, 1973; Released February 5, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS DISSENTING; COMMISSIONER REID NOT PARTICIPATING.

1. As set forth in the Notice of Proposed Rule Making released on January 14, 1971 (27 FCC 2d 36; 36 Fed. Reg. 1064), the rule making proceeding herein in Docket No. 19117 had its origin in certain conditions placed in the above captioned Section 214 P–C–7825 and P–C–7954 authorizations granted to American Telephone and Telegraph Co. (AT&T) and Pioneer-United Telephone Company (Pioneer), respectively.

2. The first such condition was imposed on September 4, 1970, when the Commission issued an Order and Authorization (FCC 70–955)

granting an application by AT&T (File No. P–C–7825) with the following proviso:

> That the facilities authorized herein shall be used only for the provision of existing services and no new classification or subclassification of service shall be instituted on these facilities or on any other interstate facilities of American Telephone and Telegraph Company and the Associated Companies of the Bell System without prior authorization of the Commission; and, *Provided further*, That Series 11000 Service shall be offered only in accordance with the provisions of the tariff presently on file with this Commission.

Later, on October 6, 1970, the Chief, Common Carrier Bureau issued an Order and Certificate under delegated authority granting an application by Pioneer (File No. P–C–7954) for furnishing channel service to a CATV operator upon condition, *inter alia*, that service on the authorized facilities:

> * * * shall include only carriage of television and FM radio broadcast signals, that no other interstate voice, video and digital communications shall be furnished by applicant over the facilities authorized without prior authorization by the Commission, and that service is provided only to Jonathan Development Corporation, or its successors or assignees * * *.

3. Both AT&T and Pioneer challenged the conditions on their respective authorizations; AT&T by a "Petition for Reconsideration" filed on October 5, 1970, and Pioneer by an "Application for Review" filed on November 5, 1970. Action on these pleadings was deferred by the Commission pending the outcome of the rule making proceeding in Docket No. 19117 which looked toward the adoption of substantive and procedural rules governing the establishment of new or revised classifications of communications and the discontinuance of classifications. (27 FCC 2d, at pages 37–38.) We shall address ourselves first to the rule making proposal herein.

4. Comments and/or reply comments on the proposed rule making were received from various interested persons.[1] Those filing consisted primarily of domestic landline carriers, international carriers, miscellaneous and specialized carriers and applicants, and communications customers or their associations. The parties are in disagreement as to the Commission's authority to adopt the proposed rules and whether they would be desirable as a matter of policy, either applied across the board or in the instance of a particular carrier.

5. Upon consideration of the record, we have decided to terminate this rule making without resolution of the issues except with respect to CATV channel service to the extent indicated in paragraphs 14–16

[1] AT&T, GTE Service Corporation; several General Telephone Operating Companies; Rochester Telephone Corporation; United States Independent Telephone Association; United Telephone System; Western Union Telegraph Company; Communications Satellite Corporation; RCA Alaska Communications, Inc.; RCA Global Communications, Inc.; United Video Inc.; Minnesota Microwave, Inc.; KHC Microwave Corp.; East Texas Transmission Company; Western TeleCommunications, Inc.; West Texas Microwave Company; American Petroleum Institute; Aeronautical Radio Inc.; Bethlehem Steel Corporation; American Express Company; Chrysler Corporation; E. I. duPont de Nemours & Co.; Ford Motor Company; Monsanto Company; Olin Corporation; Republic Steel Corporation; Union Carbide Corporation; United States Steel Corporation; Westinghouse Electric Corporation; Weyerhauser Company; Computer Time-Sharing Service Section of the Association of Data Processing Service Organizations, Inc.; National Association of Educational Broadcasters; National Association of Manufacturers; National Retail Merchants Association; Utilities Telecommunications Council; Nebraska Consolidated Communications, Corp.; Western Union International; Data Transmission Co.; and Microwave Communications, Inc.

below. We find it unnecessary to reach the question of whether the Commission's authority extends to rule making of the precise nature proposed in the Notice herein. For, in view of developments which have taken place since the commencement of this proceeding, we are of the view that the proposed rules are not desirable at this time in order to achieve the regulatory objectives to which such rules were directed.

6. Our principal objective in proposing the subject rules was to provide a reasonable opportunity for the competitive development of the market for specialized communications services. It was our concern that this objective could be thwarted by existing carriers who were in a position to institute new offerings for such services simply by filing tariffs, without any prior Commission approval, while at the same time impeding or delaying the entry of new carriers seeking to serve that market by raising various policy objections to the applications of the new entrants for authorization of facilities to provide service. This concern has been substantially mitigated by our *First Report and Order* in Docket No. 18920 (29 FCC 2d 870). By that decision, we resolved that basic policy issues presented by the proposed competitive entry of new carrier applicants into the specialized communications service market. As a consequence, new entry is no longer being delayed by the unresolved status of policy questions raised by existing carriers with respect to the service proposals of each new applicant. Moreover, our *Second Report and Order*, in Docket No. 16495, Domestic Satellites, (June 16, 1972) 35 FCC 2d 844, as substantially reaffirmed on petition for reconsideration, FCC 72–1198 (December 22, 1972), generally prohibits the Bell System companies, for a period of three years from the operational date of its proposed domestic satellite system, from providing specialized services over such system.[2]

7. Under the circumstances, we are of the opinion that we should not impose at this time any requirement for prior approval of new or revised service offerings by existing or new carriers. Moreover, continuation of such a requirement with respect to existing carriers alone might frustrate effective realization of our policy objectives of promoting full and fair competition in the specialized communications market. In this connection, we expressly concluded in Docket No. 18920 that the "public interest would be served by affording users flexibility and a wide range of choices as to how they may best satisfy their expanding and diverse specialized requirements," noting further that the new entrants were "seeking primarily to develop new services and markets, as well as to tap latent, but undeveloped submarkets for existing services" (29 FCC 2d at 906, 909–910, 923). We further stated that our policy objective is "to promote and maintain an environment within which existing and any new carriers shall have an opportunity to compete fairly and fully in the sale of specialized services"; that "our rate-making and regulatory policies and practices

[2] Also, with regard to use of terrestrial facilities of common carriers for the closed circuit distribution of motion pictures or similar program material, see Notice of Inquiry and Proposed Rule-Making in Docket No. 19671, et al., released January 24, 1973, FCC 73–73.

will be appropriately adapted to accomplish this objective"; that "we will not delay the institution of new specialized services by existing or new carriers pending the outcome of" proceedings in the Private Line Rate Case Docket 18128. Finally, we stated that "there is no reason to delay the public benefits that may derive from active and vigorous participation by the Bell System and Western Union in this market, so long as their participation is not a burden upon or significantly detrimental to their other services." (29 FCC 2d, at pages 915–917.)

8. The requirement of prior approval as contemplated by the proposed rule might well operate under current conditions to delay the establishment of service and, in fact, inhibit realization of our policy objectives in Docket 18920. Thus, for example, Microwave Communications, Inc. (MCI), a new carrier entrant, filed new tariffs that went into effect promptly, on one day's notice, effective January 1, 1972, inaugurating MCI's new specialized services between St. Louis and Chicago. Similarly, The Western Union Telegraph Company was able to file and put into effect tariff revisions matching in part the service offerings of MCI, without such tariff offerings being suspended or rejected although we designated the Western Union tariffs for hearing as to the lawfulness thereof. (Western Union/MCI Tariffs; FCC 72–627, Docket No. 19546 released July 25, 1972). Under the rules originally proposed herein, neither MCI nor Western Union would have been able to file their tariffs without prior approval from the Commission. We believe that it would be desirable for the time being at least to avoid imposing these particular kinds of strictures on the carriers. If future experience indicates that carrier behavior is designed to defeat our policy objectives of full and fair competition, we will not hesitate to take appropriate corrective and punitive measures under the Communications Act and their applicable statutes.

9. The proposed rules were further designed to promote a situation whereby public interest questions concerning the provision of a new communications service to the public are resolved, to the extent practicable, before the service is commenced. We are not now in a position to determine whether the proposed rules are necessary to further this objective or would be preferable to other approaches. We believe that it would be helpful in this respect to continue to observe the effectiveness of substantial revisions in Part 61 of our rules, which were adopted on October 13, 1970 in Docket No. 18703, and which govern the filing of tariffs (25 FCC 2d 957). As to new service offerings, these revised tariff rules require carriers to submit, at the time of filing, detailed information showing *inter alia* the basis of rate-making employed, cost projections and data as to the impact of the new offering on the carrier's traffic and revenue. The data required are the same as the data we had proposed to be submitted in our rule-making herein. Thus, we have established procedures by which we already obtain the same kind of supporting data from the carriers that was contemplated by the proposed rules. Such data has been helpful to the Commission in determining the appropriate regulatory action to be taken on offerings of new classes of service (*Western Union/MCI, supra.*). Accordingly,

as further experience with these rules dictates, we will give consideration as to whether and to what extent our existing tariff rules are adequate to accomplish the original objectives of our proposal herein and, if not, whether further changes therein might be more appropriate or desirable than rules of the nature proposed herein.

10. In connection with possible revisions of our tariff rules, we recognize that the termination of the rule making proposed herein will make it possible for domestic carriers, as a general rule, to offer new classes or subclasses of communications service over duly authorized facilities merely by the filing of appropriate tariff revisions properly supported by the cost and other data required by Part 61 and otherwise in conformity with our rules. (Exceptions would apply, for example, where the Commission, by order, might require prior special permission before tariff revisions could be filed affecting tariffs in issue in a pending formal proceeding, such as in Docket 18128). Such tariff revisions would become effective automatically unless rejected or suspended by the Commission. Inasmuch as present rules permit tariff revisions that offer new services to be filed on only one day's notice in some cases and on only 30 days' notice in other cases (see 47 C.F.R. 61.58; and 61.60–61.63), we are concerned that such short notice may be insufficient for Commission and interested parties to identify and evaluate the policy and other questions that may be raised by such tariff revisions. Accordingly, in considering further revisions in our tariff rules, we will give consideration to the question of whether or not the notice requirements for tariffs that offer new or revised classes of service should be revised. However, it does not appear necessary to defer termination of the rule-making proceeding herein pending revisions in our tariff rules.

11. Insofar as our original rule making proposal included a proposed rule requiring prior approval before a carrier may discontinue any new or revised classification of service, we have already adopted such a rule (Section 64.702(g)) in our *Computer* decision of March 18, 1971. (28 FCC 2d 267, 288). Thus, this aspect of our original proposal is no longer necessary.

12. Accordingly, in light of the foregoing, we conclude that termination of that portion of the rule making proposal set forth in paragraphs 7–12 of the Notice of Proposed Rule Making herein would best conduce to the proper dispatch of the Commission's business and to the ends of justice in the circumstances (Section 4(j) of the Act).

13. With respect to AT&T's petition for reconsideration of the condition of the September 4, 1970 authorization granting File No. P–C–7825, it is our opinion that we should grant the petition for the reasons set forth above. We do not reach the question of whether and to what extent we have authority under the Act to condition grants under Sections 214 and 309 of the precise manner employed in this case. For the reasons stated, the AT&T condition and other substantially similar conditions placed on domestic authorizations issued since that time will be declared null and void.

14. Turning now to paragraph 14 of the Notice of Proposed Rule Making concerning the conditions placed by the Common Carrier Bureau on the grant of Pioneer's applications (File No. P–C–7964)

for common carrier facilities to provide channel service to a CATV operator. Pioneer challenges the provision stating that service on the authorized facilities "shall include only carriage of television and FM radio broadcast signals, that no other interstate voice, video and digital communications shall be furnished by the applicant over the facilities authorized without prior authorization by the Commission, and that service is provided only to Jonathan Development Corporation, or its successors or assignees" (paragraph 2 above).[3] Upon examination of other authorizations of this nature issued over the past several years, we find that similar conditions have been imposed—though the limitation as to service is sometimes phrased in terms of "no service other than CATV channel service" or "no service other than wide spectrum service." We note in addition that some authorizations contain a condition that the "channel capacity of the coaxial cable facilities is not increased beyond the 12 video channels and 100 FM broadcast channels herein authorized."

15. Conditions of this nature served a useful purpose in the earlier stages of our evolving regulation of CATV. Thus, for example, these conditions facilitated the implementation of our rules and policies respecting limitations on the importation of distant signals by CATV operators. However, these conditions no longer appear necessary in light of our more recent policy determinations and rule changes in the CATV field, such as those encouraging CATV operators to provide services in addition to carriage of broadcast signals, requiring greater channel capacity for new construction in some areas, and requiring certificates of compliance. Moreover, we have recently ruled in the *Specialized Carrier* proceeding that local carriers and CATV operators are not precluded from making arrangements to provide local distribution facilities for the interstate services of specialized carriers (29 FCC 2d 870, 914, 940, fn. 66). In addition, it appears inequitable to continue to impose the kind of service limitations on the authorization of common carrier facilities that are contained in the Pioneer grant, particularly in light of our instant decision not to require prior authorization at this time for the institution of new or revised classifications of domestic services.

16. Accordingly, we will eliminate the challenged conditions in Pioneer's authorization, and declare null and void for other carriers authorized to provide channel service to CATV systems conditions of the nature described in paragraph 14 above. Such carriers will, of course, continue to be subject to Sections 214 and 307–309 of the Communications Act and the Commission's rules implementing those provisions, which may require additional authority.

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[3] Pioneer also claims that a provision requiring it to "make pole attachment or conduit space rights available to any other CATV system in the same telephone service area, upon proper request, within the limitation of technical feasibility, at reasonable charges and without undue restriction as to use," is inappropriate because the instant facilities are to be placed in trenches. However, we think that this condition is proper and consistent with the policies underlying the Commission's Memorandum Opinion and Order in Docket No. 18509 (22 FCC 2d 746). The condition does not require Pioneer to provide trenches to any other CATV operator or impose any other unusual burden not contemplated by Commission in Docket No. 18509.

17. In light of all of the foregoing, IT IS ORDERED, That:

a. The Petition for Reconsideration filed by AT&T on October 5, 1970 IS GRANTED for the reasons stated herein, and the challenged condition (the second proviso) in the Order and Authorization of September 4, 1970 (FCC 70-955) granting File No. P-C-7825 IS DELETED.

b. Similar conditions placed on authorizations for domestic facilities issued to AT&T, The Western Union Telegraph Company and other carriers since September 4, 1970 ARE DECLARED NULL AND VOID.

c. The Application for Review filed by Pioneer-United Telephone Company on November 5, 1970 IS GRANTED to the extent reflected herein and OTHERWISE DENIED; and the condition in the second ordering clause of the Order and Certificate of the Chief, Common Carrier Bureau granting File No. P-C-7954 IS DELETED.

d. Conditions of the nature described in paragraph 14 herein on outstanding authorizations issued pursuant to Section 214 of the Communications Act for the construction and operation of facilities to provide broadband channel service to CATV systems and others ARE DECLARED NULL AND VOID.

e. This proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-91

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

REQUEST, FOR ISSUANCE OF TAX CERTIFICATE FOR SALE OF INTEREST IN CABLE TELEVISION SYSTEM PURSUANT TO SECTION 76.501(a)(2) OF THE COMMISSION'S RULES, BY COX-COSMOS, INC. Re Cable Television System at Charlotte, N.C.	File No. CTAX-6

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION:

1. In our *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816, we adopted Section 76.501 (originally designated Section 74.1131) of the Commission's Rules which, inter alia, prohibits cross ownership, operation, control, or interest of a cable television system with a local television broadcast station, and requires divestiture where necessary to eliminate such existing proscribed cross-relationships.[1] In paragraph 16 of that report and order, we noted that such divestitures can be effected without payment of capital gains tax if the "involuntary conversion" provisions of the Internal Revenue Code are applicable.[2] On January 26, 1972, in *Cosmos Cablevision Corporation*, 33 FCC 2d 293, we granted the first two tax certificate applications pursuant to our new cable television cross-ownership rules.

2. Now before us is an application for a Section 1071 tax certificate, filed on August 22, 1972, by Cox-Cosmos, Inc., with respect to its sale of its cable television system at Charlotte, North Carolina, on June 18, 1971, to the Charlotte Cablevision Company, subsequently renamed

[1] Section 76.501 provides, in pertinent part: "(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in: . . . (2) a television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers) . . ."

[2] Section 1071 of the 1954 Internal Revenue Code provides that: "If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in policy or the adoption of a new policy by the [Federal Communications] Commission with respect to the ownership or control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elected, be treated as an involuntary conversion of such property within the meaning of Section 1033.)"

the Cable Television Company. In support of its application, Cox-Cosmos states that: (a) its owners are (1) Cosmos Cablevision Corporation (80%), a wholly owned subsidiary of Cosmos Broadcasting Corporation, the licensee of Station WIS–TV, Columbia, South Carolina, and (2) Cox Cable Communications, Inc. (20%), 56% of whose stock is owned by Cox Broadcasting Corporation, ultimate parent of Carolina Broadcasting Company, the licensee of Station WSOC–TV, Charlotte, North Carolina; (b) the cable system lies wholly within the predicted City Grade and Grade B contours of WSOC–TV, and partially within the predicted Grade B contour of WIS–TV; [3] (c) Cox-Cosmos has been informed by counsel for the company that purchased the system, a limited partnership, that (as shown in that company's Form 325, on file with the Commission) none of its limited or general partners have any interests in a broadcast permittee or licensee; and (d) that the sale of the system was predicated upon and in compliance with the local-cross-ownership provisions of Section 76.501.

3. The impact of Section 76.501 is that if a cable television system which has a cross-interest relationship with a local television broadcast station proposes to carry the signal of *any* television broadcast station (i.e., performs a key function by which the term "cable television system" is defined), there must be a divestiture of the interest in either the cable television system or the television broadcast station. Thus, a divestiture of the interest in either the system or the station, in compliance with the requirements of new Section 76.501, is clearly "necessary or appropriate" to effectuate a new policy by the Commission with respect to ownership and control of television broadcast stations and cable television systems.

4. On the basis of the foregoing, including Cox-Cosmos' assertions of fact as set forth in paragraph 2 supra, we find that the sale by Cox-Cosmos, Inc., of its above-described cable television system at Charlotte, North Carolina, was necessary or appropriate to effectuation of the new policy adopted by the Commission and reflected in Section 76.501 of our Rules, with respect to the ownership and control of television stations and cable television systems.

Accordingly, IT IS ORDERED, That there BE ISSUED to Cox-Cosmos, Inc., the tax certificate appended hereto, certifying that its sale of its interest in the above-referenced cable television system was necessary or appropriate to effectuation of the new policy adopted by the Commission with respect to the ownership and control of television stations and cable television systems.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[3] With respect to the latter, Cox-Cosmos submits a copy of a map showing the predicted Grade B contour of WIS–TV with respect to Charlotte, and cites Commission File Nos. BPCT–2340 and BMPCT–5228.

109–026—73——2

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Cox-Cosmos, Inc. (a corporation in which a wholly owned subsidiary of the licensee of Station WIS–TV, Columbia, South Carolina, holds an 80 percent interest, and in which a subsidiary of the ultimate parent corporation of the licensee of Station WSOC–TV, Charlotte, North Carolina, holds the remaining 80 percent interest), has reported to the Commission its sale, on June 18, 1971, of its cable television system at Charlotte, North Carolina, to the Charlotte Cablevision Company (subsequently renamed the Cable Television Company), to effectuate compliance with Section 76.501 of the Commission's Rules with respect to ownership and control of cable television systems and television broadcast stations.

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rule and policy prohibiting cross-ownership, operation, control, or interest of a cable television system with a local television broadcast station, and, in particular, to effectuate compliance with the provisions of Section 76.501 (originally designated Section 74.1131) of the Commission's Rules, adopted June 24, 1970, and released July 1, 1970, in the *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816.

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this 23rd day of January, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-86

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
Petitions To Show Cause To Be Directed
Against:
ELECTRONIC FUTURES, INC., 527 DODGE AVENUE, NORTH HAVEN, CONN. 06473

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released February 1, 1973)

BY THE COMMISSION:

1. The Commission has before it two Petitions for Order to Show Cause, filed on September 22, 1972, by HC Electronics, Inc., of Mill Valley, California, alleging that wireless auditory training microphones manufactured and sold by Electronic Futures, Inc., of North Haven, Connecticut, are in violation of provisions of the Communications Act and the Rules and Regulations of the Federal Communications Commission. The device in question is the Electronic Futures, Inc. (EFI) Model 440 microphone, which has been type approved by the Commission in accordance with Parts 2 and 15 of the Rules, under type approval number WM-125.

2. The first petition asks the Commission to direct EFI to show cause why its type approval certificate should not be withdrawn. The second asks the Commission to direct EFI to show cause why it should not be ordered to cease and desist from marketing a type-approved device in which it had made unauthorized changes, and to retrieve violative devices already in the field and bring them into compliance with the rules. Both petitions allege that EFI has made unauthorized changes in the Model 440 microphone which have resulted in overpower operation in the hands of users. The specific change complained of is the substitution of a removable plastic button for an unremovable heat-sealed button as the plug in an access hole leading to a potentiometer which controls RF output. As a result of this substitution, the user may easily adjust the potentiometer to output levels beyond the limits set forth in Section 15.212 of the Rules.

3. The Commission on December 20, 1972, adopted a letter directing EFI to stop manufacturing and marketing Model 440 microphone units which do not comply with type approval documents and with the Rules, and further directing EFI to modify units already in the field so as to bring them into compliance.[1] By reply letter dated De-

[1] Letter to Mr. James J. McKeon, President, Electronic Futures, Inc. —— FCC 2d ——.

cember 26, 1972, EFI's parent corporation, Educational Development Corp., outlined the steps it intends to take to carry out the Commission's directives.

4. In a separate filing with the Commission, EFI on November 13, 1972, requested modification of its type approval to permit the use of nylon rivets which expand at the base to plug the access hole leading to the potentiometer. In support of its request for modification, EFI stated that it was not practicable to heat seal the buttons from the inside in the manufacturing process, as the current type approval required. The Commission's Laboratory Division approved the modification by letter dated January 9, 1973.

5. These actions by the Commission and EFI will achieve the objectives sought in the two petitions filed by HC Electronics. EFI has been directed to comply with the marketing and type approval regulations and has pledged to do so. EFI also has undertaken to modify the units it sold which are not in compliance with the Commission's requirements. The type approval modification will provide a practicable means of ensuring that users of the device will not be able to adjust its power output.

6. The Commission in the past has recognized the social usefulness of devices such as those produced by HC Electronics and EFI and has tempered its enforcement efforts in this area with due regard for the needs of deaf children.[2] In view of these considerations, it would serve no useful purpose to initiate proceedings looking toward a cease and desist order or withdrawal of type approval, or to proceed further in this matter in any other way.[3]

7. Accordingly, IT IS ORDERED that the Petitions for Order to Show Cause, filed by HC Electronics, are DISMISSED.

FEDERAL COMMISSIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[2] See, for example, the Commission's action on HC Electronics' request for a waiver of radiation limits on auditory training devices. 28 F.C.C. 2d 117.

[3] We take this opportunity to address an ancillary matter concerning these principals. In a December 1, 1972, letter in support of these petitions, HC Electronics noted that it had requested permission to inspect EFI's type approval application for the Model 440 microphone, and that the Commission had not acted on the request. Under Section 0.457(d)(1)(ii), type approval data is not ordinarily available for inspection, and inspection will be permitted only upon a "persuasive showing as to reasons for inspection" contained in a request submitted under Section 0.461. HC's request, dated February 23, 1971, stated that the type approval data was essential to HC's then-pending Petition for Rule Making which sought revision of the rules governing auditory training devices. When the Commission granted HC's Petition for Rule Making (Notice of Proposed Rule Making and Memorandum Opinion and Order, Docket No. 19185, adopted March 24, 1971), the request for access to EFI's type approval application became moot, because the reasons stated in support of inspection no longer existed. Since HC did not press its request or submit new justification for inspection, it was assumed that no response was required. HC's December 1 letter also raised a question about the method of testing wireless microphones for compliance. The published procedure is contained in Bulletin OCE 19, which was released in January 1969; but some devices, including the EFI Model 440, have been tested by different means in connection with applications for type approval. The Commission will address this question in connection with petitions for reconsideration of its Report and Order promulgating regulations governing auditory training devices (Docket No. 19185, 35 F.C.C. 2d 677).

F.C.C. 73R-52

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
EMPIRE COMMUNICATIONS CO.	Docket No. 19301
For a Construction Permit to Establish Additional Facilities for Station KLP 595 in the Domestic Public Land Mobile Radio Service at Eugene, Oreg.	File No. 531-C2-P-70
LANE PAGING, INC.	
For a Construction Permit to Establish New Facilities in the Domestic Public Land Mobile Radio Service at Eugene, Oreg.	Docket No. 19302 File No. 1895-C2-P-70

MEMORANDUM OPINION AND ORDER

(Adopted January 26, 1973; Released January 31, 1973)

BY THE REVIEW BOARD:

1. The above-captioned applications were designated for hearing by Commission Memorandum Opinion and Order, FCC 71-856, released August 26, 1971, 31 FCC 2d 477. The issues were enlarged by Memorandum Opinion and Order, FCC 72R-30, released February 7, 1972, 33 FCC 2d 721, to determine, *inter alia*, whether harmful adjacent channel interference would be caused to the reception of mobile radio signals from the Lane Paging, Inc. (Lane) proposal. Land and the Common Carrier Bureau applied for review of the Review Board's Memorandum Opinion and Order and the applications for review were dismissed by Commission Memorandum Opinion and Order, FCC 72-447, 35 FCC 2d 82, petition for reconsideration denied, FCC 72-750, released August 31, 1972. Lane thereupon tendered an amendment to its application which would change its transmitter site to the same location as that proposed by Empire Communications Company (Empire). Empire and the Common Carrier Bureau opposed the amendment. When Lane sought assurance that the site would be available to it, Lane learned that the parkland proposed as a site would not be made available either to it or to Empire. Lane thereupon proposed a new site on private property adjacent to the park. The Presiding Judge, by Memorandum Opinion and Order, FCC 72M-1310, released October 20, 1972 granted Lane's petition and accepted its amendment. By Order, FCC 72M-1362, the Presiding Judge granted Empire permission to appeal that action.[1]

[1] The Board also has before it an opposition, filed November 17, 1972, by Lane; comments, filed November 17, 1972 by the Common Carrier Bureau; and a reply, dated November 22, 1972 by Empire.

2. Empire contends that the Presiding Judge erred when she found good cause for Lane's amendment.[2] Empire argues that Lane was on notice that its original site would not be suitable many months before it tendered its amendment; that the new site would result in a comparative advantage to Lane; and that since it proposes to move the site three miles and would enlarge the service area, the amendment constitutes a major change in Lane's application [3] and must be returned to the processing line for appropriate public notice.[4] Empire argues further that the language of Section 21.30(b) which was relied upon by the Bureau and the Presiding Judge to justify the acceptance of Lane's late filed major amendment does not warrant that result.

3. The appeal will be denied. The Board agrees with the Presiding Judge that Lane's late filed amendment should be accepted. However, we cannot agree that the language of Sec. 21.30(b) [5] quoted by the Presiding Judge controls this case. That rule deals with grants without a hearing, and the language in question is to be applied in determining whether there is pending a mutually exclusive application which would require a hearing. Thus it has no bearing on the propriety of an amendment tendered after the application is designated for hearing. The pertinent Rule is 21.23(b). See Fn 2, *supra*. Moreover, the Board does not agree that the amendment before us should be treated as a major amendment. The proposal neither adds or changes a frequency, nor does it improve the operating characteristics of the proposal, nor changes the type of service to be offered. It does not enlarge the service contour (see ¶4, *infra*), significantly change the location of points of communication, or materially alter an existing or proposed service. See Fn 3, *supra*. In these circumstances the Board is satisfied that the move to a new site need not be regarded as a major change.

4. Moreover, we are satisfied that there is good cause for acceptance of the amendment and the public interest will be served by preserving a choice between qualified applicants. The amendment was proffered to meet an issue added to this proceeding by the Review Board pursuant to Empire's petition. Lane proceeded with its preparations to file an amendment immediately after the Commission dismissed its

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[2] Section 21.23(b) of the Commission's Rules:
(b) Requests to amend an application after it has been designated for hearing will be considered only upon written petition properly served upon the parties of record and will be granted only for good cause shown.

[3] § 21.23(c)
(c) An application amended by a major amendment thereto (as e.g., any amendment which will change or add a frequency, or improve the operating characteristics of an existing or proposed station; or enlarge the service contour or significantly change the location or points of communications of an existing or proposed station; or which will materially alter the nature of an existing or proposed service) is subject to the provisions of § 21.27.

[4] Section 21.27 Processing of applications
(a) All applications for instruments of authorization covered by this part and major application amendments (as indicated in § 21.23) are subject to the provisions of this section, except applications for: . . .
(b) No application acceptable for filing and subject to the provisions of this section shall be granted by the Commission earlier than 30 days following issuance of public notice by the Commission of the acceptance for filing of such application or of any major amendment thereof.

[5] "Where major changes which do not relate to the mutually exclusive aspect of a proceeding are warranted, or in the case of multiple mutually exclusive issues where the warranted major changes serve to resolve one or more of the issues but do not relate to the mutually exclusive aspect of the proceeding, such changes or amendments will not serve to alter the existing mutually exclusive status so long as new conflicts are not created." . . .

application for review of the Review Board Order which added the adjacent channel interference issue. This did not unduly delay the proceeding, but, rather by the elimination of an issue, expedited it. As noted by the Common Carrier Bureau, Lane's engineering study, using standard procedures set forth in the Commission's Rules, shows that operation from the amended site would result in slight decreases (3.6 square miles and 1,316 persons) in the areas and population to be served. The Board agrees with the Common Carrier Bureau that these changes are *de minimis*. Empire's contention that the amended proposal would result in a significant expansion of the Lane service area must be rejected for lack of adequate support and required specificity. *Jennifer Mobilfone*, 37 FCC 2d 1030 (1972); Rule 1.229(c). In addition to failure to adequately explain the methods utilized in making its determination, Empire's showing contains inadequately supported generalized statements and estimates which fail to provide the reviewing authorities with information required for the fully informed and considered determination required by the Rules and the Communications Act. Furthermore, no new issues or parties are required by the grant of the amendment, nor is any party to this proceeding prejudiced thereby. Moreover, the objectionable adjacent channel interference which was the subject of the issue added by the Review Board would be eliminated by Lane's proposed amendment. The Review Board agrees with the Presiding Judge that in these circumstances acceptance of the amendment would be in the public interest.

5. Accordingly, IT IS ORDERED, That the appeal from order granting petition for leave to amend, filed on November 7, 1972, by Empire Communications Company, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R–48

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ERWIN O'CONNER TRADING AS ERWIN O'CONNER BROADCASTING CO., DAYTON, TENN. NORMAN A. THOMAS, DAYTON, TENN. For Construction Permit	Docket No. 18547 File No. BPH–6408 Docket No. 18548 File No. BPH–6479

MEMORANDUM OPINION AND ORDER

(Adopted January 26, 1973; Released January 31, 1973)

BY THE REVIEW BOARD: BERKEMEYER, NELSON AND PINCOCK.

1. The Review Board has before it a petition for reconsideration of its decision, FCC 72R–315, released November 7, 1972, 2 FCC 2d 983, —— RR 2d ——, filed December 7, 1972, by Erwin O'Conner, and two petitions for leave to amend filed December 7, 1972, and January 2, 1973, respectively, by Erwin O'Conner.[1] O'Conner's application for a new FM station was denied because he failed to establish his financial qualifications. O'Conner has advanced no new facts or arguments to support his position. His petition for reconsideration will therefore be denied. Moreover, both of his petitions to amend his application attempt to bolster his financial showing. O'Conner has failed to show cause to justify the acceptance of an amendment which would require the record to be reopened for further hearing at this late stage of the proceeding.[2]

2. Accordingly, IT IS ORDERED, That the petition for reconsideration filed December 7, 1972 by Erwin O'Conner IS DENIED and,

3. IT IS FURTHER ORDERED, That the petitions for leave to amend filed December 7, 1972 and January 2, 1973 by Erwin O'Conner ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[1] The Review Board also has before it oppositions to O'Conner's petition to reconsider, filed December 19, 1972, by the Broadcast Bureau, and December 29, 1972, by Norman A. Thomas; a reply to Thomas' oppositions, filed January 4, 1973, by O'Conner, oppositions to O'Conner's December 7 petition to amend, filed by the Broadcast Bureau on December 18, 1972, and by Thomas on December 29, 1972; oppositions to O'Conner's January 2, 1973, petition to amend, filed by the Broadcast Bureau on January 9, 1973 and by Thomas on January 17, 1973; and O'Conner's reply to the Bureau's opposition to January 2 petition to amend, filed January 15, 1973.

[2] *WEBR* v. *FCC* 136 U.S. App. D.C. 316, 420 F. 2d 158, WWIZ 4 FCC 2d 608, —— RR 2d ——.

F.C.C. 73–99

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (LA CROSSE, WIS.)	Docket No. 19533 RM–1845

REPORT AND ORDER

(Adopted January 23, 1973; Released January 29, 1973)

BY THE COMMISSION:

1. The Commission, on June 28, 1972, adopted a Notice of Proposed Rule Making (37 Fed. Reg. 13642) proposing to amend the FM Table of Assignments (Section 73.202(b) of the Rules) by adding Channel 285A to LaCrosse, Wisconsin. The action was based on the petition of LaCrosse Radio, Inc. (LaCrosse Radio), licensee of AM Station WLCX, LaCrosse.[1] Only LaCrosse Radio filed comments in response to the Notice.

2. LaCrosse, population 51,153, is the seat of LaCrosse County, population 80,468.[2] LaCrosse Radio states that LaCrosse is the largest city in southwestern Wisconsin and is the economic center for an area of more than 200,000 persons in LaCrosse County and the six adjacent counties which surround it. Of the six adjacent counties, four are in Wisconsin (Trempealeau, Jackson, Monroe, and Vernon) and have a total population of 95,178, and two (Houston and Winona) are in Minnesota and have a combined population of 60,858. LaCrosse is by far the largest city in the seven-county area. With the exception of Winona (in Winona County) which has a population of 26,438, all other cities in the seven counties are under 6,500. LaCrosse points out that LaCrosse County had a greater growth rate than any of the six surrounding counties, either on an absolute or a percentage basis, during the period of 1960 to 1970.

3. Presently assigned to LaCrosse are Channel 240A and Class C Channel 227. This intermixture was accomplished in Docket No. 18051, 13 Pike & Fischer, R.R. 1503 (1968), in which Channel 240A was assigned to LaCrosse because although the community and surrounding area merited the addition of a second Class C channel, none was available for assignment that would meet our spacing requirements. As we pointed out in the Notice in the present proceeding, our concern over

[1] LaCrosse Radio states that if the channel is assigned it will file an application for a construction permit for its use.
[2] All population figures are from the 1970 Census unless otherwise specified.

intermixture resulting from assignment of Channel 285A to LaCrosse is diminished because of the already existing intermixture.

4. Channels 240A and 227 are presently occupied by Stations WWLA(FM) and WSPL(FM), respectively. In addition to these FM stations, there are three unlimited-time AM stations in LaCrosse—WKBH, WKTY, and WLCX. Stations WKTY and WSPL(FM) are under common ownership. Station WLCX, a Class IV station, is licensed to LaCrosse Radio, the petitioner in this proceeding.

5. The engineering submission filed with the petition of LaCrosse Radio indicated that the proposed assignment of Channel 285A could be made, consistent with spacing requirements, if a site were selected at least 4½ miles west of LaCrosse. The Notice questioned whether such sites were available, and information submitted in support of LaCrosse Radio's comments indicates that there are several. LaCrosse Radio shows that one of these, some five miles southwest of LaCrosse, overlooks the community and that a station operating from this site would provide the requisite 70 dbu signal over LaCrosse.

6. The Notice also raised a question about the fact that assignment of Channel 285A to LaCrosse would preclude use of that channel in Rushford, Minnesota (pop. 1,335), Houston, Minnesota (pop. 1,082), and Caledonia, Minnesota (pop. 2,563). It pointed out that there are no AM stations or FM assignments in these communities, and expressed the necessity of having more data concerning the need for a first local service in these communities as contrasted with the need of LaCrosse for a third channel, and concerning the possibility that another channel would be available for use in one or more of these communities.

7. In response to this, LaCrosse Radio states that it is highly unlikely that an FM channel assigned to any of these three communities could or would be activated. In support of this statement it presents data to show that insufficient advertising revenues would be present in the communities to make a station viable. Moreover, petitioner points out that there are at least two FM services and a substantial number of AM services presently received in each of the communities that would inhibit the development of new FM service in them.[3] It also states that the population of each of the three communities has remained substantially the same over the past ten years, that the populations of the counties in which they are located have decreased, and that petitioner knows of no planned or likely economic development that would suggest the possibility of future population growth. In contrast with this, LaCrosse Radio points to the information set forth in paragraph 2 above, and further states that the assignment of a third channel to LaCrosse would treat that city in a manner similar to that in which other cities of approximately the same size have been treated in its area of the United States.

8. In regard to the question of availability of other channels for use in the aforementioned three communities, LaCrosse Radio shows that Channel 280A could be assigned to Caledonia, the largest of the

[3] LaCrosse Radio also states that a station operating on Channel 285A at LaCrosse would provide service to Caledonia and Houston.

three communities, and meet all spacing requirements, although it would be necessary to substitute Channel 257A for Channel 280A at Waukon, Iowa, which is occupied by Station KNEI–FM.[4]

9. On consideration of the issues involved, we find that the public interest, convenience, and necessity would be served by adding Channel 285A to LaCrosse. In this respect, it should be noted that, according to our assignment criteria, a community of this size merits 2 to 4 channels. (See Further Notice of Proposed Rule Making in Docket No. 14185, adopted July 25, 1962 (FCC 62–867) and incorporated by reference in paragraph 25 of the Third Report, Memorandum Opinion and Order, dated July 25, 1963, 23 Pike and Fischer, R.R. 1859, 1871 (1963).) A site for use of the channel must be at least 4½ miles west of LaCrosse.

10. Authority for the action taken herein is contained in Sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended. In accordance with the foregoing, IT IS ORDERED, That effective March 9, 1973, the FM Table of Assignments (Section 73.202(b) of the Rules) IS AMENDED, with respect to the city listed below, to read as follows:

City	*Channel No.*
Lacrosse, Wis.	227, 240A, 285A

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[4] LaCrosse Radio also says that Channel 272A occupied by Station WGBM(FM) at Viroqua, Minnesota, could be assigned to Caledonia and a channel substituted at Viroqua. (It may be noted that Station KNEI–FM's channel is assigned to Decorah, Iowa.) Although no mention is made of this, if either of these actions were proposed, it would be necessary to provide for reimbursement for changes in the frequency of either Station KNEI–FM or KGBM(FM).

F.C.C. 73-127

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS. (CHATSWORTH, GA.; UNION CITY, TENN.; CAMDEN, TENN.; ELDORADO, ILL.)	Docket No. 19613 RM-1954, RM-2035, RM-2028, RM-2039

REPORT AND ORDER

(Adopted January 31, 1973; Released February 5, 1973)

BY THE COMMISSION:

1. The Commission has before it its Notice of Proposed Rule Making adopted October 12, 1972 (37 Fed. Reg. 22631), inviting comments on a number of changes in the FM Table of Assignments (Section 73.202(b) of the Rules). The communities, channel assignments proposed, and petitioning parties are as follows:

RM-1954—Assign Channel 257A to Chatsworth, Georgia (Earl L. Bradsher).

RM-2928—Assign Channel 285A to Union City, Tennessee (Ed Perkins).

RM-2035—Assign Channel 252A to Camden, Tennessee (Ray Smith).

RM-2039—Assign Channel 272A to Eldorado, Illinois (Elliott O. Partridge, M.D.).

2. In each of the above cases, the petitioning party seeks the assignment of a first channel without requiring any other changes in the FM Table of Assignments. With the exception of the Chatsworth proposal, each assignment can be made in conformance with the Commission's minimum mileage separation rule. For Chatsworth, the transmitter site would have to be located immediately southeast of the city in order to meet spacing requirements.

3. The petitioning party for each of the proposed assignments filed supporting statements or comments and reiterated his intent to apply for the channel, if assigned, and to build a station, if authorized. The statements or comments of the Chatsworth, Union City and Camden petitioners incorporated by reference material in their petitions for rule making. No other parties filed comments. All proposals were unopposed except for that concerning Eldorado, which was opposed by Lawrence Elliott in reply comments. Dr. Partridge, the Eldorado petitioner, filed a "Motion to Strike" the Elliott reply comments.

4. In arriving at our decision herein, we have given consideration to all of the comments, supporting statements, and other pleadings. In the Notice of Proposed Rule Making, we set out economic and other information pertaining to the need for a first FM assignment in each of the communities. That information is accepted as being substantially correct and will not be repeated here, except to say that the communities range in size from 2,706 for Chatsworth to 11,925 for Union City (1970 Census), that a daytime-only AM station operates at Camden, a Class IV AM station operates at Union City, and that there are no local broadcast facilities at Chatsworth or Eldorado.

5. As stated above, Lawrence Elliott, in reply comments, filed an opposition to the Eldorado proposal. Mr. Elliott states that he and several other residents of the city of Nashville, Illinois, have for some time been planning the preparation and filing of a petition for rule making to assign Channel 272A to Nashville, Illinois. He further states that the proposed assignment of Channel 272A to Eldorado, Illinois, would, by virtue of a 15-mile short spacing, prohibit the assignment of Channel 272A to Nashville. In our Notice of Proposed Rule Making we stated that counterproposals advanced in the proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. Since Mr. Elliott made his counterproposal in reply comments, we shall not give consideration to his proposal. Moreover, since he has failed to submit any technical supporting data that his proposal would be short-spaced to the Eldorado proposal, we have no basis for giving consideration to his allegation.

6. Authority for the adoption of the amendment contained herein appears in Sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

7. In view of the foregoing, IT IS ORDERED, That effective March 16, 1973, Section 73.202(b) of the Commission's Rules, the FM Table of Assignments, IS AMENDED to read as follows:

City	*Channel No.*
Georgia: Chatsworth	[1] 257A
Illinois: Eldorado	272A
Tennessee:	
Camden	252A
Union City	285A

[1] A site located immediately southeast of Chatsworth would be required in order to meet the minimum spacing requirements of the rules for Channel 257A.

8. IT IS FURTHER ORDERED, that the "Motion to Strike," filed by Elliott O. Partridge, M.D., IS GRANTED.

9. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-88

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 89, 91, AND 93 OF THE COMMISSION'S RULES AND REGULATIONS CONCERNING THE USE OF THE FREQUENCY PAIR 451.800/456.800 MHz	Docket No. 19673 RM-1715

NOTICE OF PROPOSED RULE MAKING

(Adopted January 23, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Special Industrial Radio Service Association, Inc. (SIRSA), has filed a petition proposing amendment of Parts 89, 91, and 93 of the Commission's Rules relating to the use of the frequency pair 451.800/456.800 MHz. SIRSA proposes amending Section 91.504 of the Special Industrial Radio Service Rules to allow, on a secondary non-interference basis, itinerant fixed operations (control and relay stations) on the frequency pair 451.800/456.800 MHz. Second, the petitioner requests the deletion of the assignment of this same frequency pair from all services in Parts 89 (Public Safety) and 93 (Land Transportation) now having access to them on a secondary basis for fixed operations.[1] Finally, SIRSA asks us to delete restrictions which limits the use of this frequency pair for fixed operations to locations which are at least 75–100 miles removed from metropolitan areas with populations of 200,000 or more.

2. Prior to 1967, the frequency pair 451.800/456.800 MHz was available on a primary basis for itinerant mobile service and on a secondary basis for limited fixed operational requirements. In 1968, rule amendments (Docket 13847, 11 FCC 2d 648, 12 RR 2d 1555) eliminated the use of frequencies in the 450–470 MHz band by fixed stations other than control stations used for the secondary control of mobile relay stations within a given service. At the same time, this rule making provided for fixed use in other radio services on a secondary basis outside urbanized areas of 200,000 or more population. As a result, this frequency pair became available for assignment to fixed stations in the Public Safety and Land Transportation Radio Services under Parts 89 and 93 of the Commission's Rules. The rationale of this change was to protect these frequencies, as much as possible, for mobile operations and prevent de facto pre-emption by fixed systems while

[1] Sections 89.101(p) and 93.101(b).

at the same time providing for reasonable accommodation of fixed systems in areas where there was little need for mobile systems. However, petitioner points out that the result has been that, as a practical matter, there are currently no provisions in the Rules permitting use of frequencies in the 450–470 MHz band for itinerant fixed operations in the Special Industrial Radio Service. Further, since itinerant users often employ their systems in areas where there are no existing wire line facilities, or the operation is in specific locations for such limited durations that the installation of wire lines is impractical, they often are left without any control and relay facilities for their low band or VHF base/mobile stations. Consequently, their only recourse has been to negotiate special arrangements for frequencies with the cognizant advisory committee and to license control/relay links each time they move into a new location. The Commission agrees with petitioner that these processes are cumbersome and inconsistent with our policy under which we make it possible for itinerant licensees to operate their systems without incurring the delay inherent in obtaining coordination and clearance every time they move into a particular location for a short period of time. Furthermore, we are of the opinion that since this frequency pair is presently generally available for itinerant base, mobile relay and mobile operations, occasional itinerant fixed operations should not cause significant co-channel interference problems with mobile service licensees (beyond that which might otherwise be anticipated from other itinerant mobile service systems.) We, therefore, propose to amend our Rules to designate the frequency pair 451.800/456.800 MHz as available in the Special Industrial Radio Service on a secondary basis for itinerant control and relay links, when they are associated with temporary base and mobile systems licensed on other itinerant or general use frequencies allocated to the Special Industrial Radio Service.

3. The Commission further agrees with the petitioner's argument that it should delete the assignment of this frequency pair from all Parts 89 and 93 services now having access to them on a secondary basis for fixed operations. Few, if any, licensees in these services use these frequencies on a secondary basis for fixed operations knowing that serious co-channel interference can occur at any time, without prior warning because the itinerant mobile service is not coordinated. In fact, nearly all users are licensees in the Special Industrial Radio Service who use this frequency pair for its intended mobile service function. The Commission, therefore, proposes to eliminate this frequency pair from Parts 89 and 93 services.

4. With regard to the petitioner's third proposal, we do not think it appropriate, at this time, to eliminate the geographical limitation on fixed operations within a 75–100 mile distance from metropolitan areas with populations of 200,000, as requested by SIRSA's petition. To do so would in all probability have the undesired result of removing this pair from mobile service use. Thus, while we do not foresee the possibility of permitting fixed use of the frequency pair in areas where we are already experiencing frequency congestion problems, we believe there may be a possibility of modifying the 200,000 population stand-

ard, since we do not believe that frequency conflicts need be expected in all of the 87 areas included. Any action taken to consider a change for Special Industrial should also be applied in our other radio services since their need for additional fixed uses may be as great or greater than in petitioner's service. Accordingly, we plan to study the possibilities of revising the 200,000 standard. Pending an overall review of this limitation, this portion of the SIRSA petition is denied.

5. Accordingly, the petition (RM–1715) filed by SIRSA is GRANTED to the extent indicated herein; and it is DENIED in all other respects.

6. The proposed rule amendment, which is set forth in the attached appendix, is issued pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

7. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before April 6, 1973, and reply comments on or before April 20, 1973. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

8. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and fourteen copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

I. Part 89 of the Commission's Rules is amended as follows:

In Section 89.101(p) frequencies 451.800 MHz and 456.800 MHz are deleted.

§ 89.101 Frequencies.

* * * * * * *

(p) (Amended)

II. Part 91 of the Commission's Rules is amended as follows:

1. Section 91.504(a) is amended to read as follows:

§ 91.504 Frequencies available.

(a) * * *

Frequency or band	Class of stations	General reference	Limitations
*	*	*	*
451.800	Operational. Fixed base and mobile	Itinerant use	12, 28, 35
*	*	*	*
456.800	Operational. Fixed base and mobile	Itinerant use	12, 28, 35
*	*	*	*

2. Section 91.504(b) is amended by adding sub-paragraph (35) to read:

* * * * * * *

(35) This frequency may be assigned to an itinerant fixed control or relay station on a secondary non-interference basis to land mobile stations in this service, provided that the fixed relay or control station is to be associated with base and mobile facilities authorized to use other itinerant or general use frequencies available in this service. All such use of these frequencies for fixed systems is limited to locations 100 or more miles from the center of any urbanized area of 200,000 or more population, except that the distance may be 75 miles if the plate input power does not exceed 30 watts. All such fixed systems are limited to a maximum of two frequencies and must employ directional antennas with a front-to-back ratio of at least 15 db. For two-frequency systems, the separation between transmit-receive frequencies is 5 MHz. The centers of urbanized areas of 200,000 or more population are determined from the appendix, page 226, of the U.S. Commerce publication "Air Line Distance Between Cities in the United States." Urbanized areas of 200,000 or more population are defined in the U.S. Census of Population, 1960, Vol. 1, Table 23, page 1–50.

III. Part 93 of the Commission's Rules is amended as follows:

In section 93.101(b), the frequencies 451.800 MHz and 456.800 MHz are deleted.

§ 93.101 Frequencies.

* * * * * * *

(b) (Amended)

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109-026—73——3

F.C.C. 73-90

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re GENERAL ELECTRIC CABLEVISION CORP., ANDERSON, IND. For Certificate of Compliance	CAC-731 INO74

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION:

1. On June 26, 1972, General Electric Cablevision Corporation filed an application (CAC-731) for a certificate of compliance for a new cable television system to operate at Anderson, Indiana. Public notice of this application was given July 7, 1972, and was followed by an "Objection of Indiana Broadcasting Corporation Pursuant to Section 76.27" filed August 7, 1972, by the licensee of Station WISH-TV, Indianapolis, Indiana. On September 6, 1972, GE filed a "Reply of General Electric Cablevision Corporation", and on January 10, 1973, it filed an amendment to its application.

2. Indiana Broadcasting objects to GE's application on grounds: (A) that it does not provide the showing required by Section 76.13(a)(4) of the Commission's Rules [1] regarding the plans it is formulating for its access channels as required by Section 76.251 of the Rules; (B) that GE did not file its equal employment opportuntiy statement as required by Section 76.13(a)(8) of the Rules; and (C) that GE has not indicated that it will comply with the Commission's new syndicated programming exclusivity rules.

3. We rule on the objections as follows: (A) on January 10, 1973, GE amended its application to state that, "Applicant, with 30 channels available, has sufficient capacity to implement a comprehensive access program as follows: (a) For each Class I cable channel utilized, the system will have an additional channel available, 6 MHz in width, for the transmission of Class II and Class III signals; (b) The system will maintain a technical plant with 2-way capacity; (c) One specifically designated Public Access channel will be maintained,

[1] Section 76.13(a)(4) of the Rules provides that:
"(a) For a cable television system not operational prior to March 31, 1972 (other than systems that were authorized to carry one or more television signals prior to March 31, 1972, but did not commence such carriage prior to that date), an application for certificate of compliance shall include:

"(4) A statement that explains how the proposed system's franchise and its plans for availability and administration of access channels and other nonbroadcast cable services are consistent with the provisions of §§ 76.31 and 76.251."

with equipment and facilities available for its use; (d) One specifically designated educational access channel will be utilized; (e) One specifically designated channel for local government use will be available; (f) Channels will be available on a leased basis, subject to the Commission's rules concerning use and displacement; (g) When access channels are used to the degree contemplated by the rules, capacity for non-broadcast access will be expanded; (h) No program content control will be exercised over these channels, but operating rules for their use will be established; (i) The educational and local government channels will be made available, without cost, for five years following completion of the basic trunk line of the system and commencement of service;[2] (j) A full-time Director of Local Programming has been employed to develop the use of these channels in Anderson." We hold this to be an acceptable showing of consistency. E.g. *Viking Media Corporation*, FCC 72-875, —— FCC 2d ——. (B) GE has now filed its required equal employment opportunity statement; and (C) we have no requirement that an applicant give interested parties advance assurance of intent not to violate any particular rule. We note, of course, GE's statement that it will operate in accordance with our rules.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection of Indiana Broadcasting Corporation Pursuant to Section 76.27" filed August 8, 1972. IS DENIED.

IT IS FURTHER ORDERED, That General Electric Cablevision Corporation's application (CAC-731) for a certificate of compliance for a new cable television system to operate at Anderson, Indiana, IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[2] We understand this to be a restatement of Section 76.251(a)(10) of the Rules and expect the applicant to adhere to the terms of that provision.

F.C.C. 73-92

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re GENERAL ELECTRIC CABLEVISION CORP., DECATUR, ILL. For Certificate of Compliance	CAC-550 IL135

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released February 5, 1973)

BY THE COMMISSION:

1. On June 2, 1972, General Electric Cablevision Corporation filed an application for certificate of compliance (CAC-550) in which it requested authority to add three distant signals to its existing cable television system at Decatur, Illinois (in the 64th television market). The system presently carries the following television signals: WAND (ABC), Decatur, Illinois; WCIA (CBS), WICD (NBC), both Champaign, Illinois; WICS (NBC), Springfield, Illinois; and WILL (Educ.), Urbana, Illinois. The system proposed to add the following distant signals: KPLR-TV (Ind.), St. Louis, Missouri; WTTV (Ind.), Bloomington, Indiana;[1] and WCIU-TV (Ind.), Chicago, Illinois. On July 11, 1972, WFIL, Inc., licensee of Television Broadcast Station WAND, Decatur, Illinois, filed an "Opposition to Application for Certificate of Compliance". On July 12, 1972, Midwest Television, Inc., licensee of Television Broadcast Station WCIA, Champaign, Illinois filed an "Objection Pursuant to Section 76.17". On August 11 ,1972, General Electric filed a reply to the oppositions in which, *inter alia*, it withdrew its proposal to carry WCIU-TV, and on January 10, 1973, General Electric amended its application.

2. In its opposition, WFIL, Inc., objects only to carriage of WCIU-TV. In its objection, Midwest opposes carriage of WCIU-TV and argues that General Electric must guarantee to provide network and syndicated exclusivity.

3. General Electric's deletion of its proposal to carry WCIU-TV has mooted WFIL, Inc.'s objection, as well as the portion of Midwest's objection which related to this problem. For the rest, General Electric assures us that it intends to operate its system in accordance with applicable Commission regulations.

[1] As a result of the addition of distant signals to the carriage, General Electric will supply the required access channels and production facilities.

In view of the foregoing, the Commission finds that a grant of the above-captioned application for certificate of compliance would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Application for Certificate of Compliance" filed July 11, 1972, by WFIL, Inc., IS DISMISSED.

IT IS FURTHER ORDERED, That the "Objection Pursuant to Section 76.17" filed July 12, 1972, by Midwest Television, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application for certificate of compliance (CAC–550) IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-49

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of HARVEST RADIO CORP., FERGUS FALLS, MINN. For Construction Permit	Docket No. 18852 File No. PB-17918

MEMORANDUM OPINION AND ORDER

(Adopted January 26, 1973; Released January 31, 1973)

BY THE REVIEW BOARD:

1. Following issuance of an Initial Decision proposing denial of Harvest Radio Corporation's application,[1] a document entitled "Exceptions to the Opinion" was filed December 8, 1972, by the Secretary-Treasurer of the applicant purportedly on behalf of the applicant and himself. Replies to these purported exceptions were filed by the Broadcast Bureau on December 20, 1972, and by Empire Broadcasting Stations, Inc., a party respondent, on December 29, 1972. On December 27, 1972, the Bureau filed a motion to strike the exceptions stating that counsel for Harvest had informed the Chief, Hearing Division, by telephone, that the corporation's board of directors had decided not to authorize the filing of exceptions. A copy of the Bureau's motion was mailed to Harvest's counsel and to the secretary-treasurer who filed the purported exceptions, and no response to the motion has been received. Therefore, the purported exceptions will be stricken because they were not authorized by the applicant.

2. Even were the exceptions to be treated by the Board, their rejection would be warranted for failure to comply with the requirements of Section 1.277(a) of the Commission's Rules. The exceptions were also filed late, and it has not been established that good cause for the tardiness was shown.

3. Accordingly, IT IS ORDERED, That the Broadcast Bureau's motion to strike, filed December 27, 1972, IS GRANTED; that the document entitled "Exceptions to the Opinion" filed December 8, 1972, IS STRICKEN; and that the Initial Decision, released November 1, 1972, IS MADE EFFECTIVE.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[1] FCC 72D-70, released November 1, 1972.

F.C.C. 73R–44

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
STUART K. LANKFORD, GEORGE R. LANKFORD, AND RAY J. LANKFORD, D.B.A. LANKFORD BROADCASTING CO., NEW ALBANY, IND.	Docket No. 18637 File No. BPH–6427
RADIO 900, INC., LOUISVILLE, KY.	Docket No. 18638
For Construction Permits	File No. BPH–6429

MEMORANDUM OPINION AND ORDER

(Adopted January 24, 1973; Released January 31, 1973)

BY THE REVIEW BOARD: BOARD MEMBER BERKEMEYER DISSENTING AND VOTING TO REQUIRE PUBLICATION.

1. This proceeding involves the mutually exclusion applications of Lankford Broadcasting Co. (Lankford) and Radio 900, Inc. (Radio 900) for a construction permit for new FM broadcast stations in New Albany, Indiana, and Louisville, Kentucky, respectively. The applications were designated for hearing by Memorandum Opinion and Order, FCC 69–903, released August 20, 1969. On May 2, 1972, the Administrative Law Judge released an Initial Decision, FCC 72D–26, finding both applicants basically qualified, but granting the Lankford application and denying the application of Radio 900. The decision of the Administrative Law Judge was based upon 307(b) findings and a comparative evaluation of the two applicants. Following issuance of the Initial Decision, on July 3, 1972, Radio 900 filed exceptions to the decision and a request for oral argument which are now pending before the Review Board. Now before the Review Board is a joint request filed by the applicants on December 4, 1972, seeking approval of an agreement looking toward partial reimbursement by Radio 900, in an amount not to exceed $7,250, of expenses incurred by Lankford in preparing, filing and prosecuting its application; dismissal of Lankford's application; and immediate grant of Radio 900's application.[1]

2. The petitioners have complied in all respects with the provisions of Section 1.525(a) of the Commission's Rules. They have furnished affidavits which set forth the exact nature of the consideration involved,

[1] Also before the Review Board for consideration are the Broadcast Bureau's comments on the joint request, filed December 14, 1972; reply of Radio 900, filed December 27, 1972; Radio 900's petition to amend, filed December 27, 1972; and the Broadcast Bureau's comments on the petition to amend, filed January 5, 1973.

the details of the initiation and history of the negotiations, and the reasons why approval of the agreement would be in the public interest.[2] In addition, they have substantiated legitimate and prudent out-of-pocket expenses incurred by Lankford in prosecuting its application which are in excess of the amount to be reimbursed.

3. In their joint request, petitioners contend that publication of the proposed withdrawal of Lankford is not required. In support of this contention, petitioners aver that their proposals are very similar and would serve the same general area,[3] a fact the Commission noted in its Memorandum Opinion and Order, FCC 69–903, released August 20, 1969. Petitioners also point out that Louisville is substantially larger than New Albany,[4] that New Albany has two aural transmission services already licensed to it, and that New Albany presently receives services from several other broadcast stations outside the city.[5] In addition, petitioners claim that the grant of Radio 900's application would preserve the integrity of Section 73.203 of the Rules [6] inasmuch as such a grant would retain a channel in Louisville, a city which has already had one FM channel removed from it.[7]

4. The record reveals that Louisville, Radio 900's proposed station location, and New Albany, the community proposed by Lankford, are geographically contiguous. All areas served by either applicant receive at least five aural services. The record further reveals that a grant of the Radio 900 application would place a city grade signal over all of New Albany and would serve more people than would Lankford,[8] including 98.4% of the population proposed to be served by Lankford. Although Louisville has more transmission services assigned to it, it is a considerably larger community than New Albany, which does have existing transmission services. Under these circumstances, the Board concludes that the approval of the agreement would not unduly impede achievement of fair, efficient and equitable distribution of radio service pursuant to Section 307(b) of the Act and Section 1.525(b) of the Rules, and, therefore, there is no need to require publication of notice of withdrawal of the Lankford application. *Cf. Hess et al.*, 26 FCC 2d 709, 20 RR 2d 945 (1970); *Iroquois County Broadcasting Co.*, 20 RR 2d 455 (1970); *Farm and Home Broad-*

[2] Petitioners contend that approval of the agreement would make unnecessary further protracted proceedings before the Commission and thereby expedite the inauguration of a new FM service in the Louisville/New Albany area.

[3] The population in the common service area represents 98.4% of the population proposed to be served by Lankford and 91% of the population proposed to be served by Radio 900.

[4] In the 1970 U.S. Census, the population of New Albany was 38,402 and the population of the city of Louisville was 361,472 persons.

[5] Two daytime AM stations (WHEL and WREY) and one educational FM station (WNAS–FM) are presently licensed in New Albany. The city of New Albany also receives five FM services and at least two AM primary services both day and night, all of which originate from Kentucky stations.

[6] Section 73.203 of the Rules bars using elsewhere more than one channel listed to any one community.

[7] Louisville has already had one FM channel (Channel 280A), which had been assigned to it in the FM table, removed from it. This channel is presently operated as WSTM–FM, St. Matthews, Kentucky.

[8] Outside of the common area and within the 1.0 mv/m contours, Lankford would serve 10,128 persons in an area of 211 square miles and Radio 900 would serve 64,265 persons in an area of 246 square miles.

casting Co., 14 FCC 2d 162, 13 RR 2d 1078 (1968); and *Vaughn-Hessen Co.*, 2 FCC 2d 474, 6 RR 2d 926 (1966).

5. On December 27, 1972, a petition for leave to amend was filed by Radio 900. The proposed amendment was filed in response to the Broadcast Bureau's comments, filed December 14, 1972, on the petitioners' joint request, in which the Bureau urged that Radio 900 did not appear to have sufficient funds to meet its obligations under its present agreement with Lankford without jeopardizing its financial qualifications.[9] Radio 900's amendment demonstrates that it has sufficient available funds to meet its respective commitments to Lankford and to construct and operate its proposed station for one year without reliance on revenue, and it will be accepted. Inasmuch as the financial question raised by the Broadcast Bureau in its comments has been satisfactorily answered, and because Radio 900 has previously been found qualified to operate its proposed station, the Board concludes that the public interest, convenience and necessity will be served by an immediate grant of Radio 900's application and the dismissal, pursuant to the request of the applicants, of Lankford's application.

6. Accordingly, IT IS ORDERED, That the petition for leave to amend, filed December 27, 1972, by Radio 900, Inc., IS GRANTED and the amendment IS ACCEPTED; that the joint request for approval of partial reimbursement of expenses, filed December 4, 1972, by Radio 900, Inc. and Stuart K. Lankford, George R. Lankford, and Ray J. Lankford, d/b/a Lankford Broadcasting Co., IS GRANTED; that the agreement IS APPROVED; that the exceptions and request for oral argument, filed July 3, 1972, by Radio 900, Inc. ARE DISMISSED; that the application of Lankford Broadcasting Co. (File No. BPH-6427) IS DISMISSED with prejudice; that the application of Radio 900, Inc. (File No. BPH-6429) IS GRANTED; and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[9] In addition to the amount of $7,250 which Radio 900 would be obligated to pay Lankford under their agreement, Radio 900, pursuant to a joint agreement approved by the Board in an Order, 21 FCC 2d 424, released February 3, 1970, would also be obligated to pay $1,000 to Harrison Radio, Inc., a former applicant in this proceeding, if Radio 900 receives a grant of its application.

F.C.C. 73-87

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of PETITION TO AMEND PART 89 OF THE RULES TO PERMIT THE INSTALLATION OF MOBILE UNITS LICENSED IN THE LOCAL GOVERNMENT SERVICE IN VEHICLES NOT OPERATED BY THE LICENSEE.	Docket No. 19672 RM-1547

NOTICE OF PROPOSED RULE MAKING

(Adopted January 23, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Northern California Chapter of the Associated Public Safety Communications Officers, Inc., has filed a petition to amend Section 89.257 of the Commission's Rules to permit mobile communications units, licensed in the Local Government Radio Service, to be installed "in any vehicle which requires cooperation or coordination with the licensee." This provision includes "ambulances, water department and public utility service units, lifeguard units, school buses, and vehicles of contractors or other persons or agencies having responsibility for official local governmental activities of the licensee."

2. The petition argues that "the identical corollary need has been recognized and provided for in . . . many other Public Safety Radio Services," i.e., Police, Fire, Highway Maintenance, and Forestry-Conservation, and that it would be in keeping with evolving Commission policy now further to relax these restrictions in the Local Government Radio Service.

3. We have considered the petitioner's request, and have concluded that the public interest would best be served by granting the petition insofar as emergency vehicles and vehicles charged with official governmental activities are involved. This would largely grant the relief asked for by the petitioner, while at the same time, limiting the use of Local Government frequencies to emergency situations, and to communications related to local governmental functions. This limitation would be in keeping with the permissible scope of non-licensee use of radio facilities now provided for in other Public Safety Radio Services. The proposed rule would thus permit installation of mobile units in ambulances, utility emergency vehicles, and other similar vehicles mentioned by the petitioner, with which the licensee may need to communicate during an emergency. Our proposal would further permit the licensee

to install its mobile units in vehicles of contractors performing functions which the licensee might otherwise perform. However, it would not permit the installation of radio units in non-emergency vehicles not performing governmental functions with which the licensee might want to communicate because the latter purpose is not one for which local government frequencies are available.

4. The proposed rule amendment, which is set forth in the attached appendix, is issued pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

5. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before April 6, 1973, and reply comments on or before April 20, 1973. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by the notice.

6. In accordance with the provisions of Section 1.54 of the Commission's Rules and Regulations, the original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 89 of the Commission's Rules is amended as follows:
In Section 89.257, paragraph (b) is added to read:

§ 89.257 Station Limitations

* * * * * * *

(b) Subject to the provisions of § 89.157, communication units of a licensed Local Government Radio Service mobile station may be installed in any vehicle which in an emergency would require cooperation or coordination with the licensee, and in any vehicles used in the performance of official local governmental activities of the licensee. This provision includes ambulances, emergency units of public utilities, lifeguard emergency units, and vehicles of contractors or other persons or agencies performing for the licensee one or more of its local governmental functions.

* * * * * * *

F.C.C. 73–94

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re MAGIC VALLEY CABLE VISION, INC., TWIN FALLS, FILER, AND KIMBERLY, IDAHO and IDAHO VIDEO, INC., JEROME AND GOODING, IDAHO Requests for Waiver of Section 76.93(b) of the Commission's Rules	CSR–223 (IDO30), CSR–224 (IDO28), CSR–225 (IDO29) CSR–226 (IDO24), CSR–227 (IDO23)

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION: COMMISSSIONER JOHNSON CONCURRING IN THE RESULT.

1. Magic Valley Cable Vision, Inc., operates cable television systems at Twin Falls, Filer, and Kimberly, Idaho, and Idaho Video, Inc., operates systems at Jerome and Gooding, Idaho. Each of these systems is located within the predicted Grade B contour of Television Broadcast Station KMVT, Twin Falls, Idaho, and within the Mountain Time Zone. As such, they are presently required to provide KMVT with same-day network program exclusivity, pursuant to Section 76.93(b) of the Commission's Rules and our recent decision in *Idaho Video, Inc.*, FCC 72–1046, —— FCC 2d ——. Magic Valley and Idaho Video have filed a "Petition for Special Relief" seeking waiver of Section 76.93(b) in order to provide simultaneous-only exclusivity to KMVT. The KLIX Corporation, licensee of KMVT, has opposed this petition, and Magic Valley and Idaho Video have replied.

2. In support of their waiver request, Magic Valley and Idaho Video argue that: a) persons in the Twin Falls television market prefer to view network programs at the time that they are broadcast by the Salt Lake City stations rather than at the earlier hours chosen by Station KMVT; b) same-day exclusivity was meant to protect a station's programming only against pre-release by a lower priority station, not against post-release; c) providing simultaneous-only exclusivity will not cause economic injury to KMVT; d) simultaneous exclusivity will cause KMVT only a 33 per cent loss of protected program hours, and e) an evidentiary hearing is required to determine the merits of the waiver request.

3. KMVT is a CBS affiliate that also carries NBC and ABC programming. Network feeds to Salt Lake City are immediately broadcast by KMVT but are broadcast on a one-hour delayed basis by the

Salt Lake City network affiliates. Without same-day exclusivity KMVT alleges that it must either conform to the Salt Lake City programming schedule or risk a loss of viewers to cable systems carrying the Salt Lake City stations. KMVT asserts that conforming to Salt Lake City schedules is undesirable due to the prohibitive cost of adequate tape delay equipment ($120,000) and to the need for independence by Twin Falls viewers from the preferences and interests of Salt Lake City viewers. Further, simultaneous-only exclusivity will reduce KMVT's prime time exclusivity protection by 55 per cent,[1] thus fragmenting a substantial part of an already small audience (40,000 households). Finally, KMVT argues that the petitioners have in the past provided same-day exclusivity without economic injury and retain the technical equipment to continue providing it.

4. We rule on petitioners' waiver arguments as follows: a) the Commission places responsibility for the selection and scheduling of broadcast programming on each broadcast licenses, and will not normally interfere with the exercise of a broadcaster's discretion. In the *Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, the Commission recognized that same-day exclusivity in the Mountain Time Zone would have some impact on viewing habits, but concluded that this form of exclusivity was an adequate compromise of the competing interests; b) the same-day exclusivity rules are meant to apply without regard to the distinction between pre-released and post-released programming. See *Reconsideration of the Cable Television Report and Order*, *supra*, and *Second Report and Order in Dockets 14895 et al.*, 2 FCC 2d 725; c) in the *Reconsideration of the Cable Television Report and Order*, *supra*, we determined that, with the exception of Mountain Time Zone television stations licensed to designated communities in the first 50 major television markets, Mountain Time Zone stations are entitled to same-day exclusivity regardless of economic need; d) petitioners provide no supporting data for this assertion, and it is not clear whether it is based on total program hours or some selected time period. We believe that prime time viewing hours should be emphasized in such an analysis, since prime time hours attract more than 60 per cent of each household's total viewing time (Nielsen ratings, November 26, 1972) and account for more than 50 per cent of total network television revenue. While we do not now determine how many hours of protected programming must be lost to warrant denial of a same-day exclusivity waiver request, we rule that in this case a 55 per cent loss of prime time hours is too great to permit a change from same-day exclusivity; and e) petitioners' threshold factual allegations do not persuade us that a hearing is necessary here. E.G., *Wheeling Antenna Company* v. *Federal Communications Commission*, 391 F. 2d 179.

[1] KMVT indicates that during prime time, same-day exclusivity provides 14½ hours per week of protection and simultaneous exclusivity would provide only 6½ hours' protection. It also indicates a protection loss of 11½ hours per week during the 5 p.m. to sign-off hours and 13 hours per week on an all-day basis.

In view of the foregoing we find that grant of the requested waiver of Section 76.93(b) of the Rules would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Special Relief" filed by Magic Valley Cable Vision, Inc., and Idaho Video, Inc., IS DENIED.

IT IS FURTHER ORDERED, That Magic Valley Cable Vision, Inc. and Idaho Video, Inc. SHALL CONTINUE to comply with the requirements of Sections 76.91 and 76.93(b) of the Commission's Rules on their cable television systems at Twin Falls, Filer, Kimberly, Jerome and Gooding, Idaho, respectively.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–89

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
METRO CABLE CO., LOVES PARK, ILL.	CAC–247, IL124
METRO CABLE CO., UNINCORPORATED COMMUNITY OF NORTH PARK, ILL.	CAC–248, IL125
METRO CABLE CO., UNINCORPORATED AREA OF WINNEBAGO COUNTY, ILL.	CAC–249, IL126
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONERS REID AND WILEY NOT PARTICIPATING.

1. On April 24, 1972, Metro Cable Company filed applications for certificates of compliance for new cable television systems to serve Loves Park, the unincorporated community of North Park, and adjacent unincorporated areas of Winnebago County, Illinois (all within the Rockford-Freeport television market, #97). In its application[1] Metro states that it commenced operations on March 30, 1972, and is presently carrying the following television signals:

WCEE–TV (CBS), Freeport, Illinois.
WTVO (NBC), Rockford, Illinois.
WREX–TV (ABC), Rockford, Illinois.
WTTW (Educ.), Chicago, Illinois.
WXXW (Educ.), Chicago, Illinois.
WHA–TV (Educ.), Madison, Wisconsin.

Metro seeks to add two additional signals:

WFLD–TV (Ind.), Chicago, Illinois.
WGN–TV (Ind.), Chicago, Illinois.

Oppositions were filed by CATV of Rockford, Inc., and by Winnebago Television Corp., licensee of Television Broadcast Station WTVO, and Metro replied.

2. In its opposition filed June 2, 1972, CATV of Rockford, Inc., claims, *inter alia*, that Metro could not have been operating prior to March 31, 1972, since two of its technicians investigated Metro's facilities on March 31, 1972, and found them apparently inoperative.

[1] Metro submitted a single "master" application for Loves Park and identical copies for North Park and the unincorporated area of Winnebago County. See Paragraph 111, *Cable Television Report and Order*, 36 FCC 2d 143, 186 (1972). However, there is at least one difference which the application does not point out: Metro has a franchise for Loves Park, but none for North Park or the unincorporated area of Winnebago County since there is apparently no franchise authority for those areas. *See* Paragraph 10, *infra*.

Metro responded that on March 30 its system "was initially energized and began suppling . . . signals."

3. On August 2, 1972, CATV of Rockford, Inc., filed a "Reply to Response of Metro Cable Co. and Petition for Special Relief for Stay of Further Construction and for Immediate Issuance of Order to Show Cause Preceeding Issuance of Cease and Desist Order to Prevent Further Illegal Operations and Violations of the Commission's Rules." Therein, it claims that Metro apparently was not in operation prior to March 31, 1972, and therefore should cease its operations until it receives Commission certification. Rockford submits an affidavit from one of Metro's former construction supervisors stating that it was not possible for signals to have reached subscribers before March 31, 1972, because there was a short circuit present in the system when it was energized on March 30, and that the first date on which signals were delivered to a subscriber was April 4. Metro, in its opposition to Rockford's petition, submits a further affidavit from the same employee stating that his first affidavit was prepared for Rockford while he was applying to them for employment and that he made some incorrect statements at that time. Specifically, he states in the second affidavit that he cannot verify whether or not there was signal on the line before March 31.

4. Based on the record before us, we conclude that Metro was in operation on March 30, 1972, and is therefore grandfathered under the Commission's rules. Metro has affirmatively stated that it was in operation on March 30, 1972, and CATV of Rockford, Inc. has not sufficiently contravened that assertion.[2] Accordingly, we will deny CATV of Rockford, Inc.'s requests that we stay construction and issue an order to show cause preceding issuance of a cease and desist order to halt Metro's operations.

5. Winnebago Television Corp. asserts that Metro offers no channel devoted solely to public access, no channel devoted exclusively to educational access, no government access channel, and no studio or production facilities for public access users.[3]

6. Metro proposes a channel for which public access will be given first priority, but which will also be utilized for local educational programs, technical testing, and leased channel requests. We have no objections to the use of a public access channel for occasional technical testing or leased uses so long as public access users are given top priority. *See* Par. 125, *Cable Television Report and Order*, 36 FCC 2d 143, 191–92 (1972). However, we do not feel that regular use of the public access channel for educational programming is in keeping with

[2] At the most, CATV of Rockford, Inc. raises the question whether the short-circuit which caused disruption of service occurred after a period during which there was service or existed when the cable was installed and thereby prevented any service until it was repaired. However, viewing the facts in the light most favorable to CATV of Rockford, Inc.'s position, we are still inclined to find that the system is grandfathered within the meaning of the rules, since Metro constructed its system over a period of several months and completed all construction and other arrangements to the point where it was ready to deliver broadcast signals to its subscribers on March 30.

[3] Winnebago also argues that we should withhold certification pending the outcome of the *Midwest Video* case. This objection has been rendered moot by the Supreme Court's decision in *United States* v. *Midwest Video Corp.*, 406 U.S. 649 (1972).

our policy that there be "one dedicated noncommercial public access channel available without charge at all times. . . ." Par. 121, *Cable Television Report and Order*, *supra* at 190. Although there may be times when the public access channel is vacant, we feel that regular educational or instructional users will have the effect of discouraging members of the public from asserting their right of access. Consequently, Metro shall not use its public access channel for the educational programs produced by local educational authorities.

7. Similarly, Metro proposes a channel for which local educational authorities will be given priority, but which will also be used to carry the signal of WXXW, a Chicago educational station which broadcasts on a part-time basis with programs designed for in-school instructional viewing. We have stated that "it is our intention that local educational authorities have access to one designated channel for instructional programming and other educational uses." Paragraph 123, *Cable Television Report and Order*, *supra* at 191. Metro states in its application and reply that it will work with local educational authorities to coordinate the availability of channels. We stress that the educational access channel shall be "specifically designated for use by the local educational authorities." Section 76.251(a)(5) of the Rules. If the local educational authorities desire the carriage of some or all of the programs of WXXW on Metro's educational access channel, Metro may comply with the request due to the fact that WXXW is a station which Metro could lawfully carry if it had the channel capacity. However, the local educational authorities may preempt some or all of the WXXW programs when they see fit; the decision is not Metro's.

8. Metro asserts that it will maintain "adequate production and studio equipment for public access use." In addition, Metro plans to provide a bi-directional dual cable from its head-end to the TV studio/auditorium complex of Rock Valley Junior College. We do not require an elaborate description of the equipment available to access users, but require only that the system make a showing that it maintains "at least the minimal equipment and facilities necessary for the production of programming. . . ." Section 76.251(a)(4) of the Rules. Metro has made such a showing.

9. Since Metro asks for certification to add two signals to its existing cable system it need only provide public access and educational access channels. Winnebago Television's objection that Metro does not plan to provide for local government access is not well taken. Metro states that it plans to provide a channel in the sub-low band for local government uses. The signals on this channel will not be available to home subscribers. We do not reach the question of whether such a use fulfills the requirement of 76.251(a)(6) of the Rules, but have no objection to such operations under the present circumstances.

10. Although Metro has a franchise for Loves Park, there is no franchise authority in North Park or the unincorporated area of Winnebago County. Metro has received permission from the Board of

109-026—73——4

County Supervisors for Winnebago County and the State Division of Highways to construct its cable system in the unincorporated areas. Since Metro was in operation prior to March 31, 1972, we will not require the "alternative proposal" discussed in Paragraph 116, *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326, 366 (1972), until March 31, 1977. By letter, CATV of Rockford, Inc., claims that Metro has not taken all necessary steps to procure local authority to string its cables. Metro has responded by stating that, while the blanket permit to string wires is on file with this Commission, Metro does not send us copies of the permits needed every time they run cables across or alongside a road, although, in fact, Metro has received such further permits. We do not wish to become entangled in a dispute over local law regarding permits to string cables across or alongside roads. Metro has been constructing its cable system since January, 1972, and apparently county and township authorities have taken no action to enjoin further construction. From this, we assume that Metro has the appropriate local authority required by our Rules.

In view of the foregoing, we find that a grant of Metro Cable Company's "Application for Certificate of Compliance" (CAC–247, 248, and 249) would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the above-captioned applications for Certificates of Compliance filed by Metro Cable Co. ARE GRANTED except as indicated in paragraphs 5–7 above, and appropriate certificates of compliance will be issued.

IT IS FURTHER ORDERED, That the "Conditional Opposition to Application for Certification," and "Reply to Response of Metro Cable Co. and Petition for Special Relief for Stay of Further Construction and for Immediate Issuance of Order to Show Cause Preceding Issuance of Cease and Desist Order to Prevent Further Illegal Operations and Violations of the Commission's Rules," filed by CATV of Rockford, Inc., ARE DENIED.

IT IS FURTHER ORDERED, That the "Objections to Application for Certification" filed by Winnebago Television Corp., ARE GRANTED to the extent indicated in paragraphs 5–7 herein, and otherwise ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 73–112

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of MID-MICHIGAN BROADCASTING CORP., CLARE, MICH. Requests: 990 kHz, 250 W, DA, Day (Facilities of WCRM(AM))	BP–19,328, BPI–42
MID-MICHIGAN BROADCASTING CORP., CLARE, MICH. Requests: 95.3 MHz, No. 237; 3 kw.; 160 feet (Facilities of WCRM–FM) For Construction Permits	BPH–8241, BPHI–3

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 6, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has before it for consideration the above-captioned and described applications for authority to operate the facilities of WCRM(AM) and WCRM–FM, Clare, Michigan, and a "Petition for Waivers, for Acceptance, and for Special Temporary Authority" filed December 26, 1972, by Mid-Michigan.

2. In its Memorandum Opinion and Order, FCC 72–1020, released November 17, 1972, the Commission denied the applicant's request for temporary operating authority and for waiver of various procedural rules. Applications of Bi-County Broadcasting Corporation, licensee of stations WCRM(AM) and WCRM–FM, for renewal of licenses were designated for hearing in April of 1972. On June 27, 1972, the stations went silent. As pointed out in our previous Memorandum Opinion and Order, Bi-County has agreed to sell Mid-Michigan the stations' equipment for $35,000 and related real estate for $18,940. Upon Commission approval of the arrangement, Bi-County is to surrender its licenses.[1] We refused to sanction this arrangement because we were unable to make the necessary finding regarding the basic qualifications of Mid-Michigan, since there appeared to be serious questions regarding the qualifications of three of Mid-Michigan's four principals. These three individuals had been employed by Bi-County and it appeared that they may have been involved to some

[1] By Memorandum Opinion and Order released November 29, 1972, FCC 72M–1473, Administrative Law Judge Frederick W. Denniston denied Bi-County's renewal applications for lack of prosecution and terminated the proceedings in Docket 19492. This order was reaffirmed by Memorandum Opinion and Order released December 27, 1972, FCC 72M–1582.

extent in the alleged falsification of logs by the stations' general manager.

3. On December 22, 1972, Mid-Michigan amended its applications to reflect that the three principals involved were no longer stockholders or had any other connection with the proposed new operation. In light of this development, the Commission's reservations are no longer applicable.

4. Having examined the applications anew, we find, pursuant to section 309(f) of the Communications Act of 1934, as amended, that a grant of the applications is authorized by law except for the proscription of 309(b) of the Act [2] and that extraordinary circumstances exist requiring emergency operation in the public interest in order to restore the only local broadcast services to the town of Clare, Michigan. Accordingly, we will grant temporary emergency authorization for a period not exceeding 90 days.

5. In order to pave the way for early consideration of permanent authorization for the community, we are also waiving the procedural rules barring acceptance of Mid-Michigan's proposals. Finally, a public notice will be issued establishing a standard broadcast "cut-off" date and inviting other parties to file for the facilities.

6. Accordingly, IT IS ORDERED, That the "Petition for Waivers, for Acceptance and for Temporary Authority" filed by Mid-Michigan Broadcasting Corporation IS GRANTED; that sections 1.516(c), 1.571(c), and note 2 to 1.571 ARE WAIVED; and that the above-captioned applications ARE ACCEPTED for filing.

7. IT IS FURTHER ORDERED, That, pursuant to section 309(f) of the Communications Act of 1934, as amended, temporary authority to operate the facilities of stations WCRM(AM) and WCRM-FM IS HEREBY GRANTED Mid-Michigan Broadcasting Corporation for a period of 90 days beginning on the date of the release of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[2] Section 309(b) precludes the Commission from granting an instrument of authorization in the broadcast service until 30 days after public notice of its acceptance for filing. Section 309(f) provides an exemption from this requirement provided a grant is otherwise authorized by law.

F.C.C. 73-118

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of the Application of MID-TEXAS COMMUNICATIONS SYSTEMS, INC. For Issuance of Tax Certificate for Sale of KBC Corporation Pursuant to Section 64.601 of the Commission's Rules.	File No. CCTAX-1-73

MEMORANDUM OPINION, ORDER AND CERTIFICATE

(Adopted January 31, 1973; Released February 2, 1973)

BY THE COMMISSION:

1. In Docket 18509, we adopted Section 64.601 of the Commission's Rules which, among other things, prohibits telephone common carriers subject to the Communications Act of 1934, as amended, to engage in the furnishing of cable television service to the viewing public within their telephone service areas either directly or indirectly through an affiliated company, and which requires divestiture on or before March 16, 1974 where necessary to eliminate such existing proscribed cross-relationships when cable television service was being furnished to the viewing public on or before May 1, 1970.[1] As we have previously noted in connection with adoption of other cable television cross-ownership rules, such divestitures may be effected without payment of capital gains tax if the "involuntary conversion" provisions of the Internal Revenue Code are applicable.[2]

2. Section 1071(a) of the Internal Revenue Code provides, in pertinent part, that:

> If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of section 1033. . . . (26 U.S.C. 1071)

3. Now before us is an application, requesting the issuance of such a certificate pursuant to Section 1071 of the Internal Revenue Code, filed by Mid-Texas Communications Systems, Inc. (Applicant) on November 21, 1972. Applicant is engaged in the business of providing land-line common carrier telephone services, through its subsidiary Mid-Texas Telephone Company, to Killeen, Harker Heights, Belton

[1] *Section 214 Certificates*, 22 FCC 2d 746 (1970); affirmed *General Telephone Company of the Southwest* v. *United States*, 449 F. 2d 846 (1971).
[2] *CATV*, 23 FCC 2d 816, 822 (1970).

and Copperas Cove, Texas. Prior to March 27, 1972, Applicant also owned and operated cable television systems in said communities through another subsidiary, KBC Corporation. On that date, Applicant sold all of the stock of KBC Corporation to Daniels Properties, Inc., doing business as CableVision Properties, Inc., in order to comply with Section 64.601 of our Rules proscribing cross-ownership of operating telephone and cable television companies within the same communities.

4. In authorizing the extension of KBC Corporation's Killeen cable television system to the adjacent community of Harker Heights on January 29, 1971, the Commission found that the Killeen system commenced operations on December of 1964.[3] It also appears that KBC Corporation's cable television systems in Copperas Cove and Belton, Texas were in service in May and September of 1966, respectively.[4]

5. A divestiture of either the telephone or cable television operations of Applicant's subsidiary companies in the above-mentioned communities, in compliance with the requirements of new Section 64.601, is clearly "necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy" by the Commission with respect to the direct or indirect furnishing of cable television service to the viewing public by a telephone company within its telephone service area.

We previously have found that the term "radio broadcasting stations" within the meaning of Section 1071 of the Internal Revenue Code refers also to cable television systems and that Section 1071 may appropriately be applied to divestitures of cable television systems.[5]

6. Accordingly, IT IS ORDERED, That the application of Mid-Texas Communications Systems, Inc. File No. CCTAX–1–73, IS, HEREBY, GRANTED and that the tax certificate appended hereto be issued to Mid-Texas Communications Systems, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE INTERNAL REVENUE CODE (26 U.S.C. 1071)

Mid-Texas Communications Systems, Inc. has reported to the Commission the sale, on March 27, 1972, of all of the stock of KBC Corporation, formerly a subsidiary corporation of Mid-Texas, to Daniels Properties ,Inc., d/b/a CableVision Properties, Inc., of Denver, Colorado, to effectuate compliance with Section 64.601 of the Commission's Rules with respect to the direct or indirect furnishing of cable television service to the viewing public by a telephone company within its telephone service area.

[3] *In the Matter of KBC Corporation,* File No. W602–4.
[4] See Annual Reports of KBC Corporation (FCC Form 325) on file with the Commission.
[5] *See Cosmos Cablevision Corp.,* 33 FCC 2d 293, 295 (1972) and *Viacom, Inc.,* 38 FCC 2d —— (1972).

IT IS, HEREBY, CERTIFIED That the sale was necessary or appropriate to effectuate the Commission's new rule and policy prohibiting a telephone common carrier from directly or indirectly furnishing cable television service to the viewing public within its telephone service area, and in particular, to effectuate compliance with the provisions of Section 64.601 of the Commission's Rules, adopted April 22, 1970 and released April 24, 1970, in Docket 18509, 22 FCC 2d 746.

This certificate is issued pursuant to the provisions of Section 1071 of the Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this first day of February, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R–61

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
SALEM BROADCASTING CO., INC., SALEM, N.H.	Docket No. 19434 File No. BP–18325
NEW HAMPSHIRE BROADCASTING CORP., SALEM, N.H.	Docket No. 19435 File No. BP–18479
SPACETOWN BROADCASTING CORP., DERRY, N.H.	Docket No. 19436
For Construction Permits	File No. BP–18492

MEMORANDUM OPINION AND ORDER

(Adopted February 2, 1973; Released February 6, 1973)

BY THE REVIEW BOARD:

1. Section 1.106(a) of the Commission's Rules declares, in effect, that petitions for reconsideration of interlocutory rulings of the Review Board will not be entertained. Salem Broadcasting Co., Inc. and New Hampshire Broadcasting Corporation jointly request a waiver of this rule to permit the Board to reconsider its action of November 22, 1972, adding a series of issues based on Section 73.37 of the Rules.[1] The Board can find no justification for waiver in the petition before it. Certainly, there is no similarity between the facts cited in support of waiver here and those which lead the Board to reconsider in *Naugatuck Valley Service, Inc.*, 3 FCC 2d 642 (1966), cited by petitioners. The argument that Section 73.37 is only applicable in deciding whether or not an application is acceptable for filing was made when the petition to enlarge was first before the Board, it was considered in detail at that time, and the reasons for rejecting it were explained. Finally, petitioners' disagreement with the Board's interpretation of population data in the course of deciding whether to add the issue is not a valid basis for waiver of the rule. The place to resolve the question of Salem's population is at the hearing, not in repeated arguments before the Board.

2. Accordingly, IT IS ORDERED, That the petition for waiver of Section 1.106(a) of the rules and for reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[1] 38 FCC 2d 170, released November 22, 1972. The joint petition was filed November 30, 1972; Spacetown Broadcasting Corporation and the Broadcast Bureau filed their oppositions December 11, 1972; the petitioners replied on December 21, 1972.

F.C.C. 73-130

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
CHARLES O. POTTER, ESQ.
against
KVAL-TV, KEZI, AND KPNW OF EUGENE, OREG.

ORDER

(Adopted January 31, 1973; Released February 2, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS CONCURRING IN THE RESULT.

1. The Commission has before it an Application for Review filed on July 26, 1972 by Charles O. Porter, Esq., of the ruling of the Broadcast Bureau of June 28, 1972, 35 F.C.C. 2d 664 (1972).

2. We have examined the pleadings herein and believe that the Bureau's ruling was correct. Accordingly, pursuant to Section 1.115(g) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R-400

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTH CAROLINA EDUCATIONAL TELEVISION COMMISSION (WITV), CHARLESTON, S.C. STATE TELECASTING CO., INC. (WUSN-TV), CHARLESTON, S.C. FIRST CHARLESTON CORP. (WCIV-TV), CHARLESTON, S.C. WCSC, INC. (WCSC-TV), CHARLESTON, S.C. For Construction Permits	Docket No. 18569 File No. BPET-323 Docket No. 18570 File No. BPCT-4107 Docket No. 18571 File No. BPCT-4121 Docket No. 18572 File No. BPCT-4127

APPEARANCES

R. Russell Eagan, *Aloysius B. McCabe*, and *Theodore A. Shmanda*, on behalf of South Carolina Educational Television Commission (WITV) and WCSC, Inc. (WCSC-TV); *Joseph F. Hennessey*, on behalf of State Telecasting, Co., Inc. (WUSN-TV); *Howard F. Roycroft*, on behalf of First Charleston Corporation (WCIV), parties applicant; *Ben C. Fisher* and *James V. Dunbar, Jr.*, on behalf of Cosmos Broadcasting Corporation (WIS-TV); *Michael S. Horne*, on behalf of Palmetto Radio Corporation; *David R. Anderson*, on behalf of Columbia Television Broadcasters, Inc. (WOLO-TV), parties respondent and/or intervenors; and *John F. Reilly* and *Joseph Chachkin*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted December 19, 1972; Released January 2, 1973)

BY THE REVIEW BOARD: BOARD MEMBER NELSON CONCURRING WITH STATEMENT. BOARD MEMBER PINCOCK DISSENTING WITH STATEMENT.

1. This proceeding involves the joint proposal of South Carolina Educational Television Commission (WITV), State Telecasting Co., Inc. (WUSN),[1] First Charleston Corporation (WCIV) and WCSC, Inc. (WCSC), licensees of VHF television broadcast stations in Charleston, South Carolina, to move their respective transmitter sites from separate locations to a joint tower located approximately twenty-

[1] By Memorandum Opinion and Order, 31 FCC 2d 156, 22 RR 2d 711 (1971), which was released subsequent to the Initial Decision, the Review Board approved the substitution of State Telecasting Co., Inc. (State Telecasting) for Reeves Telecom Corporation (WUSN); the substitution became effective on September 1, 1971.

one miles northwest of Charleston.[2] Administrative Law Judge James F. Tierney released an Initial Decision, FCC 71D–19, on April 23, 1971, in which he concluded that the joint application must be denied since a grant would have a significant adverse impact on existing and/or prospective UHF stations in the Columbia and Florence, South Carolina, areas, and an undetermined but lesser effect on other present and/or prospective UHF stations at Wilmington, North Carolina, and Savannah and Augusta, Georgia.[3] Exceptions and a brief in support thereof were filed by the joint applicants. The Review Board has considered the Initial Decision in light of the exceptions and briefs, its examination of the record, the arguments of the parties[4] and the recent substitution of State Telecasting for WUSN.[5] The Presiding Judge's findings of fact are thorough and accurate in all significant respects. With minor exceptions, the joint applicants challenge the Presiding Judge's inferences and conclusions of law, rather than his findings. Consequently, except as modified herein and in the rulings contained in the attached Appendix, the Presiding Judge's findings of fact are adopted. Although the Board does not agree with the Presiding Judge that a denial of the joint application could be predicated at least in part on the impact which would be occasioned by the tall tower proposal in the Columbia, South Carolina, and, to a limited extent, Wilmington, North Carolina, and Augusta and Savannah, Georgia, markets, the Board is in full agreement with the Presiding Judge's conclusions with respect to the Florence market and with his ultimate determination. Thus, in the Board's view, the Florence, South Carolina, market is the critical or decisional market, and, in our view, the Charleston tall tower proposal would cause substantial adverse UHF impact in that market. In view of the extensive arguments advanced by both the joint applicants and respondents, however, some amplification of the Presiding Judge's conclusions in this regard is required.

2. The decisional standards applicable to the UHF impact policy are well established and not seriously in dispute. Briefly stated, rather than attempting to guarantee the absolute success of UHF television broadcast stations, the Commission seeks to protect and encourage

[2] By Memorandum Opinion and Order, 18 FCC 2d 328, 16 RR 2d 725 (1969), the Commission designated the joint applications for hearing under a UHF impact issue. Subsequently, the Board added a *Suburban* issue with respect to the three commercial VHF stations involved in the joint proposal (FCC 69R–442, 20 FCC 2d 342). By various actions of the Commission and Presiding Judge three currently-existing party respondents were named to the proceeding—Palmetto Radio Corporation (WNOK–TV) and Columbia Broadcasting, Inc. (WOLO–TV), licensees of Columbia, South Carolina, UHF Stations WOLO and WNOK, and Cosmos Broadcasting Corporation, licensee of VHF Station WIS–TV, Columbia, South Carolina.

[3] Additionally, the Presiding Judge favorably resolved the outstanding *Suburban* issue with respect to the four original applicants.

[4] Oral argument was held before a panel of the Review Board on September 21, 1972.

[5] In its Memorandum Opinion and Order, 31 FCC 2d 156, *supra*, permitting the substitution of State Telecasting Co., Inc., the Board held in abeyance action on a petition to reopen and immediately close the hearing record, filed June 15, 1971, by State Telecasting, seeking to introduce a new *Suburban* showing. The petition was opposed by the respondents on various grounds, including, *inter alia*, the contentions that they should be accorded hearing rights with regard to the new *Suburban* showing and the effect of the substitution on the UHF impact issue. Since State Telecasting has assumed the technical proposal of WUSN, we fail to see the significance of the substitution on the UHF impact issue; and, in light of our determination to deny the application under the UHF impact issue, we need not and do not reach the *Suburban* issue. State Telecasting's petition to reopen will therefore be dismissed.

UHF television as much as possible without, at the same time, foreclosing possible advantages to the public which may be achieved by the improvement of VHF service.[6] When these policies come into serious conflict, however, as they do in this instance, the Commission has determined that the UHF protection policy must prevail. Application of these principles has resulted in the Commission's consistent refusal to grant applications of VHF stations to expand their coverage areas when the effect would be detrimental to present or prospective UHF development. Thus, in an effort to preserve a realistic potential for UHF growth, the Commission has made a judgment that where proposed VHF expansion is likely to seriously jeopardize the development of UHF broadcasting, the "paramount policy of fostering UHF service would more than offset the policy of encouraging VHF stations to provide the best possible service to the largest number of persons. . . ." [7] The UHF protection policy is not without limitation, however; where only minimal, rather than substantial, UHF impact is shown, Commission policy does not require denial of an application to improve the operation of an existing VHF station, especially where substantial service benefits would be achieved by a grant of the VHF application.[8] Application of these guidelines to the Florence market leads us, as it did the Presiding Judge, to two necessary conclusions: first, that the Florence market has a realistic potential for UHF development; and second, that grant of the Charleston tall tower proposal would forestall or obviate this potential. In our view, as in the Presiding Judge's, these judgments are fully supported by the facts of record.

3. Of necessity, any judgment concerning the probable future development of a television market is to some extent based on forecasts and reasonable inferences drawn from the record evidence, rather than on hard or positive proof. In our view, the respondents, both by direct and circumstantial evidence, have provided a sufficient basis for the judgment that there is a reasonable and realistic likelihood of UHF development in Florence, given the denial of the instant proposal. Although the joint applicants take issue with this conclusion on several grounds, we nevertheless, are persuaded that they have failed to meet their burden of proof under the issue in this vital respect.

4. The primary basis for concluding that there is a realistic potential for UHF development in Florence is the existence of a significant "hole" in ABC viewing in the counties which constitute the Florence market. The Florence Area of Dominant Influence (ADI),[9] which

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[6] See *Atlantic Telecasting Corp.* (*WECT*), 3 FCC 2d 442, 7 RR 2d 297 (1966), affirmed *sub nom. Lee* v. *FCC*, 126 U.S. App. D.C. 45, 374 F. 2d 259, 8 RR 2d 2111 (1967); *Cosmos Broadcasting Corporation* (*WSFA–TV*) 21 FCC 2d 729, 18 RR 2d 538 (1970), remanded on other grounds 28 FCC 2d 630 (1970).

[7] *WLVA, Inc.* v. *FCC*, —— U.S. App. D.C. ——, —— F. 2d ——, 23 RR 2d 2081 (1972); *Daily Telegraph Printing Company*, FCC 72R–270, 36 FCC 2d 4, 24 RR 2d 877 (1972).

[8] See *Cosmos Broadcasting Corporation* (*WSFA–TV*), *supra; cf. Atlantic Telecasting Corp.* (*WECT*), *supra.*

[9] ADI is an American Research Bureau concept referring to all counties within the total survey area of a television market in which the viewing hours are dominated by the station(s) in that market; each county in the nation is assigned to only one ADI.

consists of seven counties, is primarily reflective of the operation of VHF Station WBTW, which is located in Florence;[10] in addition to the CBS coverage provided by WBTW, Florence receives extensive NBC service from Station WIS–TV in Columbia, South Carolina, and Station WECT–TV in Wilmington, North Carolina. In contrast, there is very little ABC service received in the market. Assuming activation of either of the two available UHF channels in Florence, operating with an ABC affiliation and facilities comparable to those of former Florence permittee WPDT, a substantial portion of the ABC white area in the Florence vicinity would receive a first ABC service.[11] We believe that the existence of this "white area", absent some material evidence to the contrary, presupposes a realistic potential for UHF development in Florence.[12] In contrast, the joint applicants have presented evidence of a generalized and, in the main, conclusory nature; for example, the joint applicants broadly argue that even if the Charleston tall tower proposal were to be denied, the Florence market would remain of small dimensions and incapable of supporting a second commercial station for some time, because of its relatively small size and its proximity to larger television markets which surround it. Clearly, this evidence, albeit bolstered by opinion testimony concerning the development of several adverse trends generally affecting UHF viability, lacks "direct, specific factual data, the type of pertinent and relevant material required for it to prevail in the *ad hoc* resolution of the impact issue." *WHAS, Inc.* (*WHAS–TV*), 4 FCC 2d 724, 8 RR 2d 475 (1966), affirmed as modified FCC 66–1159, 8 RR 2d 1214; *Cosmos Broadcasting Corporation* (*WSFA–TV*), *supra.*

5. An ABC affiliation is critical to any prospective UHF facility in Florence; clearly, it is a *sine qua non* of such an operation. There is dispute among the parties, however, as to the likelihood of any Florence UHF securing an ABC affiliation. Contrary to the assertions of the joint applicants, it is not incumbent upon the respondents to demonstrate that an affiliation is an absolute certainty in the event that the tall tower proposal were to be denied. Rather, as we believe the respondents have done, they must show that there is a reasonable likelihood of obtaining the affiliation given denial of the instant proposal. The existence of an ABC white area in the market is, in our view, a *prima facie* showing that this is a reasonable likelihood.

6. In this connection, we believe that the circumstances surrounding the cancellation of UHF permittee WPDT's construction permit in

[10] Four channels are allocated to Florence. In addition to WBTW, WJPM, a non-commercial educational channel, operates on Channel 33; UHF Channels 15 and 21 are presently both idle.

[11] The ABC white area in the Florence market, according to respondents, contains approximately 130,000 persons within 1,730 square miles.

[12] It is interesting to note that the combined ABC affiliates which presently serve portions of the market achieve a fairly low quarter-hour viewing share; for example, they garner a scant 4.4% share in the home county of Florence and but a 9.5% share in the entire ADI. Thus, it not only appears reasonable to conclude that the white area would be a ready market for an ABC-affiliated UHF, but also that there is a definite potential for increased ABC service to those areas which presently receive distant ABC signals within the market.

1969 [13] shed some light on the prospects of a Florence UHF securing an ABC affiliation. In conjunction with its second request for extension of time within which to construct in 1968, WPDT advised the Commission that it wished to prosecute its application and stated that it had previously received assurance of an affiliation with ABC, but that such assurance had been withdrawn when ABC's Charleston affiliate had filed an application which, if granted, would permit it to place a Grade B signal over Florence for the first time.[14] Despite the variety of obstacles with which WPDT was faced in 1969, the permittee indicated to the Commission that it was willing to make an unequivocal commitment to build its proposed station, but for the pendency of the Charleston tall tower proceeding. Although the permittee's assessment of its competitive situation at that time did not constitute sufficient grounds for grant of a further extension of time, we do not believe that the cancellation indicates, as the applicants argue, that there was then, or is now, no realistic potential for or interest in UHF development in the Florence market. Rather than determining the fate of one particular permittee as in *Radio Longview, Inc., supra*, we believe that the outcome of this proceeding will affect any or all UHF potential in Florence. In short, we are of the view that the entire prospect for UHF development in Florence is threatened by the intrusion of the three Grade B VHF signals,[15] where one is a well established ABC affiliate, seeking to serve a substantial portion of the ABC white area in the Florence market.

7. Accordingly, IT IS ORDERED, That the petition to reopen and immediately close the record, filed June 15, 1971, by State Telecasting Co., Inc., IS DISMISSED as moot; and

8. IT IS FURTHER ORDERED, That the joint application of South Carolina Educational Television Commission (WITV) (BPET–323), State Telecasting Co., Inc. (WUSN–TV) (BPCT–4107), First Charleston Corporation (WCIV) (BPCT–4121) and WCSC, Inc. (WCSC–TV) (BPCT–4127), IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
DONALD J. BERKEMEYER, *Member, Review Board.*

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[13] On November 17, 1965, the Commission granted a construction permit to Rovan Television, Inc. for operation of UHF station WPDT on Channel 15 in Florence; subsequently, in *Radio Longview, Inc.*, 19 FCC 2d 966, 16 RR 2d 1026 (1969), the construction permit was cancelled on the grounds that the permittee's failure to construct was due to its own independent assessment of the competitive situation and not to circumstances beyond its control.

[14] More important, the Charleston ABC affiliate would provide a first ABC service to 1,425 square miles within which 145,517 persons reside.

[15] As noted by the Presiding Judge, all three Charleston VHF stations would, if their proposal were to be granted, provide service to approximately 40% of the Florence UHF's Grade B contour. The intrusion of three additional Grade B signals in this market, regardless of network affiliation, would make, as the Presiding Judge concluded, any realistic prospect for successful UHF development highly unlikely.

APPENDIX

Rulings on Exceptions of South Carolina Educational Television Commission, State Telecasting Co., Inc.,* First Charleston Corporation, and WCSC, Inc. to Initial Decision

Exception No.	*Ruling*
1, 6, 27	*Denied.* The Presiding Judge's findings accurately and adequately reflect the record.
2, 26, 28	*Granted.* WITV's recent move to the present WCSC–TV tower was undertaken as an interim measure pending the outcome of this proceeding.
3	*Granted.* The Board notes the following affiliations:

Station:	*Network Affiliation*
WSOC–TV	NBC
WBTV	CBS
WGHP	ABC
WCCB–TV	ABC

4	*Granted.* Scotland County, North Carolina, is one of seven counties which compose the Florence ADI.
5	*Granted.* Respondents do not claim that the proposed increase in the Charleston facilities will have any adverse impact on fifteen out of twenty Grade B gain counties resulting from the 1968–1969 improvements in the facilities made by Columbia UHF Stations WOLO–TV and WNOK–TV. These 15 counties account for 64.4% of WNOK's recent Grade B population gain (97,119 out of 150,745) and 63.5% of WOLO's recent Grade B population gain (107,970 out of 170,034).
7	*Granted.* The increased or new overlap between the proposed augmented Charleston stations and the present, proposed and prospective UHF stations in the Wilmington, North Carolina, and Augusta and Savannah, Georgia, markets would be slight, ranging from 5 to 7%. Moreover, the distances between Charleston and the three markets are great (152 miles from Wilmington, 127 miles from Augusta, and 83 miles from Savannah); additionally, there is no record showing of any propinquity between Charleston and these markets which would suggest that viewers in these markets would be drawn or attracted to a distant Grade B signal from Charleston.
8	*Granted.* Respondents do not claim that the Charleston tall tower proposal would have any meaningful impact on UHF audiences in the four Columbia ADI counties of Lexington, Richland, Kershaw and Fairfield, which collectively contain 69% of the TV homes in the Columbia market.
9	*Granted* to the extent that the audience shares credited to the two Columbia UHF stations in Sumter, Lee, Orangeburg, Calhoun and Clarendon Counties are *de minimus;* and *denied* in all other respects as not decisionally significant.
10, 12, 20	*Granted.* The economic testimony in this respect is conclusory and unsubstantiated opinion evidence.
11	*Granted.* At present the major sources of revenue for WOLO–TV and WNOK–TV are the Columbia ADI counties of Lexington and Richland.
13	*Denied* as not decisionally significant. See paragraphs 5 and 6 of this Decision.

*See Footnote 1 of the Decision, *supra.*

14 ---------- *Granted.* The Board is of the view that the Presiding Judge erred in concluding that the opinions of the objectors' economic expert warrant "guarded endorsement". Rather, in very large measure, the opinions are based upon unfounded factual and statistical assumptions, which are controverted in substantial respects by admissions on cross-examination, the economic evidence presented by the joint applicants and the record evidence. In sum, the economic expert's theories lack probative value.

15, 21, 23, 25, 42, 51, 53, 56, 57. *Denied* as not decisionally significant.

16 ---------- *Granted.* The findings excepted to are without record support.

17 ---------- *Granted.* Particularly with regard to local advertisers, factors other than ADI ranking and composition significantly affect advertising patterns.

18---------- *Granted in substance.* In order to shift one or more of the five allegedly "critical counties" from the Columbia to the Charleston ADI, the Charleston VHF stations must divert a sufficiently large percentage of viewers from the Columbia stations to achieve a preponderance of viewing within a county. The counties of Sumter, Lee, Orangeburg and Calhoun would be assigned to the Columbia ADI even if the two UHF stations were not in existence (Clarendon County became part of the Charleston ADI in 1969; there is no record evidence indicating that there is any real possibility that the county would shift back to the Columbia ADI given the denial of the tall tower operation). Thus, the Charleston stations, particularly WCIV, the NBC-affiliated station, must chip away WIS' dominance in each county in order to achieve a shift. However, WIS is a formidable competitor in a variety of ways in comparison with all three Charleston stations, particularly WCIV. For example, WIS covers the entire four-county area with a Grade B or better signal; in contrast, the Charleston stations would cover varying proportions of the population of each county (from 33% in Lee County (WUSN) to 94% in Sumter County (WCIV and WCSC)). Additionally, WIS has a well-established and substantial network audience share, accounting for most, if not all, of the NBC audience share in each county. The strength of this network share is reinforced by the fact that Columbia has a greater community of interest with each county than with the more distant Charleston. Based on these considerations, the Board is not convinced that WCIV's prospects of gaining a significant increase in NBC network share at the expense of WIS are great. Accordingly, we are not convinced of the probability of any, let alone all four, counties shifting to the Charleston ADI. As a consequence, the estimate of loss of advertising revenue which supposedly would flow from slippage of all four counties from the Columbia ADI as a result of audience loss to WOLO and WNOK is totally without merit. One additional matter remains to be considered; Dr. Seiden's analysis regarding probable loss of audience share in the four "critical" counties fails in one essential respect; the expert failed to consider the full range of competition which exists in the Columbia ADI; rather than the

two-sided competition which he apparently envisioned, there would be at least three affiliates of ABC or CBS competing for network shares in three out of four of the "critical" counties. This error, we believe, is fatal to his analysis.

19 ..... *Granted* in part and *denied* in all other respects as not decisionally significant. 69% of the Columbia ADI TV homes are located in the four counties of Lexington, Richland, Kershaw and Fairfield. The economic situation of both WOLO and WNOK stems primarily from their inability to redress their competitive imbalance vis-a-vis WIS in the major portion, as well as in the principal community, of the market, rather than in the more competitive fringe counties which respondents urge are critical. See Ruling 5, *supra*. Also see *Daily Telegraph Printing Company, supra*.

22, 43, 44, 48 ..... *Granted in substance.*

24 ..... *Granted in substance.* See Ruling on Exception 18, *supra*. Additionally, the Board notes that the respondents' economic consultant failed to consider the significant presence of and competitive implications of ABC and CBS signals primarily from Augusta, Georgia, and Florence, South Carolina, in the five allegedly "critical" counties.

29 ..... *Granted in substance.* Operating as proposed, WITV would reach 386 schools with enrollment of some 200,000 students. 228 of the 386 schools are located within WITV's authorized Grade B contour, operating from the WCSC tower. (98 schools are reached by WITV under its present mode of operation.) Of these 158 additional schools, 24 would receive a first educational television service. In terms of population alone, grant of the joint proposal would result in a first non-commercial educational service gain of 108,945 persons in 2,978 square miles when compared to WITV's present mode of operation, and 22,085 persons in 458 square miles when compared to the interim coverage provided by the modified construction permit.

30 ..... *Granted.* See Rulings 2, 28 and 29, *supra*.

31, 32, 33 ..... *Denied* as moot in light of the Board's adverse resolution of the UHF impact issue.

34 ..... *Granted.* See Ruling 7, *supra*.

35, 39, 55 ..... *Denied* as being of no decisional significance in light of our conclusion that the proposed operation would result in substantial UHF impact in the Florence market.

36 ..... *Granted.* See Rulings 7 and 34, *supra*.

37, 45, 50, 52, 54 ..... *Denied* to the extent and for the reasons given in this Decision.

38 ..... *Granted.* The factors cited would appear to indicate some, albeit not substantial adverse impact.

40, 41, 47, 49 ..... *Granted.* The conclusions are speculative and controverted by the record evidence. See Ruling 18.

46 ..... *Granted in substance.* See paragraph 2 of this Decision.

Concurring Statement of Board Member Joseph N. Nelson

I concur in the *result* reached in the Decision denying the joint applications on the ground that, in the words of the issue framed herein, a grant of said applications "would impair the ability of authorized and prospective UHF television broadcast stations in the area to compete effectively, or would jeopardize, in whole or in part,

109-026—73——5

the continuation of existing UHF television service." Thus, since the Commission did not limit its interest in UHF television service solely to existing stations but included, specifically, "authorized and prospective" stations, I would add to the impact that would accrue to Florence the additional impact that would accrue to Columbia and other communities. *WLCY–TV, Inc.*, 16 FCC 2d 506, 516, 517, 16 RR 2d 642, 655, 656 (1969), pet. rev. den. 25 FCC 2d 832, 20 RR 2d 342 (1970), pet. recon. den. 28 FCC 2d 353, 21 RR 2d 572 (1971).

In my view, based upon the record evidence, a significant and substantial showing has been made that grant of the Charleston tall tower proposal also poses a serious threat to effective UHF competition in the Columbia, South Carolina, market. In short, grant of the instant application would foreclose the development of Columbia commercial UHF Stations WOLO–TV and WNOK–TV as effective competitors within their only realistic area of potential competitive expansion, namely, the Columbia Area of Dominant Influence. It is clear that the proposed transmitter site moves of the Charleston VHF stations to a tower located 21 miles from Charleston contemplates a substantial increase in Grade B overlap with the Columbia UHF stations, namely, from the existing overlap range of between 5 and 6% of the Grade B service area to the proposed overlap of between 22 and 24% of the Grade B area. Particularly significant is the fact that this expanded overlap would be concentrated primarily in five counties, four of which comprise one-half of the constituent counties of the Columbia ADI. If the two Columbia UHF stations are to succeed at all, it is obvious that it must be within their primary sphere of influence, the Columbia ADI, which the Charleston proposal now threatens to a substantial degree. To argue that the audience market in these counties is already fractionalized because of existing competing network signals obscures the inescapable fact that any additional, directly duplicative network competition will diminish the audience potential for the two UHF stations. Moreover, the expansion would serve to quite literally "waste" the effect of the UHF stations' recent expansion in facilities and their resultant success in gaining audience in these counties. In my view, the further intrusion of three Charleston VHF signals, two of which would be in direct competition with WOLO–TV and WNOK–TV for network shares, not only would diminish the recent audience gains made by the UHF's within the Columbia ADI, but, additionally, would render their recent efforts to achieve some semblance of parity with Columbia VHF Station WIS an exercise in futility.

Reference must be made to the fact that UHF Channel 35 is allocated to Columbia (the capital of South Carolina and the seat of Richland County) and that non-commercial educational Station WRLK–TV is being operated therein by the South Carolina Educational TV Commission. Thus, it would appear that Columbia, the main source of information concerning state and county activities, is a place of particular significance with respect to television program-

ming. The Grade B contour of WRLK–TV is nearly identical with those of the other two UHF stations in Columbia whose radial reach varies between 49 and 54 miles. Accordingly, there exists a common UHF audience and the adverse effects on any one UHF station in Columbia will, in some form, be felt by the others. The record sets forth the alleged financial and operating benefits which would accrue to educational applicant, WITV, Charleston, also licensed to the above Commission; however, no effort was made to show the detriments, if any, which might be suffered by WRLK–TV by the proposed move of the Charleston stations. Obviously, the above educational Commission must have decided in favor of the Charleston station: however, it is the FCC which must make the ultimate public interest finding and this it is unable to do in the absence of record evidence. In *WLCY–TV*, *supra*, adverse UHF impact was found despite the fact that two UHF stations supported the proposed move of a VHF station which had agreed to permit said UHF stations to use the proposed tower under financially attractive conditions. See also *Aiken Cablevision, Inc.*, 12 FCC 2d 727, 730, 13 RR 2d 936, 940 (1968), wherein the Board disallowed a private agreement in a Section 74.1107 CATV case, noting that "the relevant considerations at hearing transcend the private rights of any individual broadcasters."

Finally, on the question of the degree, if any, to which the Commission's encouragement of UHF is alleged to have sagged, reference must be made to its views set forth recently in *WLCY–TV, Inc.*, FCC 72–994, released November 17, 1972. In that Opinion, the Commission referred to its 1961 precedent-setting case of *Triangle Publications* and stated:

> The Commission's longstanding UHF impact policy arose out of a realization that the development of a viable system of UHF broadcasting would not occur without providing protection against VHF stations. *Triangle Publications, Inc.* v. *FCC*, 291 F 2d 342 (1961). *WLVA, Inc.* v. *Federal Communications Commission*, 23 RR 2d 2081. The Commission's desire to foster the development of UHF broadcasting is well known and there has been no basic change in this policy. . . .

And later in that Opinion, the Commission again stated:

> As recently as March 1971, in *WLCY–TV, Inc. Docket No. 17051*, 28 FCC 2d 353, the Commission stated its policy with respect to UHF development had not changed, and that until 'UHF becomes substantially equal and fully competitive, the question of 'UHF impact' must continue to be of substantial concern'. We find that the petitioners have raised a substantial question of fact with respect to UHF impact, and an appropriate issue will be specified.

In summary, the impairment to UHF in Florence warrants a denial of the subject applications. When added to the adverse effects on two operating commercial UHF stations and, possibly, an operating educational UHF station in Columbia, the impairment grows substantially. And if we were to add even slight adverse effects to UHF in Wilmington, North Carolina, and Savannah and Augusta, Georgia, the impairment reaches the point of substantial plus.

DISSENTING STATEMENT OF BOARD MEMBER
DEE W. PINCOCK

The majority bases its determination on little more than a surmise, namely, that the existence of an ABC "white area" presupposes a realistic potential for UHF development in Florence. Underlying this assumption are two necessary hypotheses, neither of which is supported by the record evidence. There is no record support for finding either that the Florence market is sufficiently large and economically capable of supporting a UHF facility, or that a UHF facility in Florence could, absent the proposed maximum service tower, obtain an ABC affiliation. The respondents have failed to come forward with factual or economic evidence which would tend to support either of these assertions, let alone present some indication from ABC that such an affiliation would be even a remote possibility. Rather, the majority has chosen to sacrifice definite and immediate inauguration of full network service to well over one hundred and forty thousand people on the hypothetical assumption that at some time in the indeterminate future a qualified applicant may obtain a construction permit to utilize one of the Florence UHF channels and ABC may find it profitable to affiliate with such a station. This is a poor substitute for the immediate service offered by the instant proposal and I believe contra to Commission policy as enunciated in *VHF Channel Assignment at Mount Vernon, Illinois*, FCC 69–1209, 17 RR 2d 1620, reconsideration denied 22 FCC 2d 222, 18 RR 2d 1625, affirmed *Plains Television Corp.* v. *FCC*, 21 RR 2d 2014 (U.S. App. D.C. (1971)), where the Commission indicated that, even though a proposed VHF assignment would provide a first Grade B signal to a substantial white area, which theoretically could be served by a UHF facility, the proposed VHF assignment was consistent with fostering UHF development ". . . simply because there appears to be no likelihood of such development in the near or middle-range future."

F.C.C. 71D-19

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
SOUTH CAROLINA EDUCATIONAL TELEVISION COMMISSION (WITV), CHARLESTON, S.C.	Docket No. 18569 File No. BPET-323
REEVES TELECOM CORP. (WUSN-TV), CHARLESTON, S.C.	Docket No. 18570 File No. BPCT-4107
FIRST CHARLESTON CORP. (WCIV), CHARLESTON, S.C.	Docket No. 18571 File No. BPCT-4121
WCSC, INC. (WCSC-TV), CHARLESTON, S.C.	Docket No. 18572 File No. BPCT-4127
For Construction Permits	

APPEARANCES

R. Russell Eagan and *Theodore A. Shmanda*, Esqs. (Kirkland, Ellis, Hodson, Chaffetz, Masters & Rowe) on behalf of South Carolina Educational Television Commission (WITV) and WCSC, Inc. (WCSC-TV); *Joseph F. Hennessey*, Esq. (Pittman, Lovett, Ford, Hennessey & White) on behalf of Reeves Telecom Corporation (WUSN-TV); *Howard F. Roycroft*, Esq. (Hogan and Hartson) on behalf of First Charleston Corporation (WCIV), parties applicant; *Ben C. Fisher*, Esq. (Fisher, Wayland, Duval, Southmayd & Cooper) and *James V. Dunbar, Jr.*, Esq. on behalf of Cosmos Broadcasting Corporation (WIS-TV), *Michael S. Horne*, Esq. (Covington & Burling) on behalf of Palmetto Radio Corporation (WNOK-TV); *David R. Anderson*, Esq. (Wilmer, Cutler & Pickering) on behalf of Columbia Television Broadcasters, Inc. (WOLO-TV), parties respondent and/or interviewers; and *John F. Reilly*, Esq., on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER JAMES F. TIERNEY

(Issued April 15, 1971; Released April 23, 1971)

PRELIMINARY STATEMENT

1. By Memorandum Opinion and Order (18 FCC 2d 328, released June 18, 1969) the Commission being unable to make the statutory finding that a grant of the instant applications would serve the public interest because of certain substantial and material questions of fact not being susceptible of resolution without an evidential hearing, ordered such a hearing on the following issues:

1. To determine whether a grant of the applications would impair the ability of authorized and prospective UHF television broadcast stations in the area

to compete effectively, or would jeopardize, in whole or in part, the continuation of existing UHF television service.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, whether grant of the applications would serve the public interest, convenience and necessity.

2. In its designation Order the Commission particularly noted its concern respecting the issues here, stating:

> While the Commission encourages television broadcast stations to operate with maximum facilities in order to make the most efficient use of channel assignments, we have also expressed our concern with fostering the development of UHF broadcasting. By the hearing ordered herein, a full record will be established which will form a basis for determining the choice between these policies.

3. Rovan of Florence, Inc.,[1] then permittee of WPDT, Channel 15, Florence, South Carolina; Clay Broadcasting Corporation (WWAY), licensee of Station WWAY, Channel 3, Wilmington, North Carolina;[2] Palmetto Radio Corporation (WNOK–TV), licensee of WNOK–TV, Channel 19, Columbia, South Carolina, and Columbia Television Broadcasters (WOLO–TV), licensee of WOLO–TV, Channel 25, Columbia, South Carolina,[3] were named parties respondent by the Commission.

4. The burden of proceeding under Issue 1, *supra*, was placed on the parties respondent and the burden of proof under Issues 1 and 2 on the applicants.[4]

5. Leave to Intervene was granted by the Presiding Officer to Cosmos Broadcasting Corporation (WIS–TV), licensee of WIS–TV, Channel 10, Columbia, South Carolina, by Order released August 11, 1969, (FCC 69M–993).

6. In a ruling at the prehearing conference, September 26, 1969, the Presiding Officer determined that the issues as designated were sufficiently broad to comprehend a proper showing disclosing the public interest benefits to be realized from a grant of the applications (Tr. 11–12).

7. By Memorandum Opinion and Order released October 30, 1969, (20 FCC 2d 342), the Review Board added the following issue to the case:

> To determine the efforts made by Reeves Telecom Corporation (WUSN–TV), First Charleston Corporation (WCIV) and WCSC, Inc. (WCSC–TV) to ascertain the community needs and interests of the area to be served and the means by which the applicants propose to meet such needs and interests.

8. The Commission, upon formal request of the parties applicant, waived (FCC 70–315 released March 30, 1970) its Interim Procedure staying further proceedings on *Suburban* issues (See *Interim Procedure Relating to Submission of Community Survey Showings in*

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[1] Rovan's construction permit was cancelled by the Commission July 15, 1969 (19 FCC 2d 966). It later withdrew as a party to the proceeding by letter dated August 20, 1969.

[2] The Commission granted Clay's request to be removed as a party September 3, 1969 (20 FCC 2d 666).

[3] First expressing a wish not to participate in an expensive complex hearing, WOLO–TV, thus, did not file an appearance. Later it petitioned, November 9, 1969, for reinstatement which was granted December 1, 1969, by the Presiding Officer (FCC 69M–959).

[4] The Review Board declined to shift the burden of proof under Issue 1 to the respondents. 20 FCC 2d 550; Application for Review denied, FCC 70–158, released February 27, 1970.

Connection with Radio and Television Applications—FCC Public Notice 70–312 released March 26, 1970). This allowed the concerned applicants to make their respective showings without delay. In this regard the parties applicant have waived any right to later amend their *Suburban* showings should the Commission subsequently promulgate policies and criteria different from those presently in being (Tr. 391).

9. A prehearing conference was held on September 26, 1969, with hearing sessions on February 19, 24–25, March 31, April 1–3, 9–10, May 27–28, 1970. The record was closed on May 28, 1970, and briefly re-opened on July 18 and August 27, 1970, to receive minor changes in one application; and was again closed on August 27, 1970. Comprehensive Proposed Findings and Conclusions were filed by all parties within the allotted time and Reply Findings were filed by Parties Respondent/Intervenor, September 21, 1970. The record was again re-opened briefly to receive a further amendment to an application; it was finally closed on December 22, 1970.

THRESHOLD FINDINGS OF FACT

Engineering and Other Technical Considerations

1. The four applicants, one of which is an educational television licensee (an arm or affiliate of the State Educational System), operate four authorized Charleston, South Carolina, television stations [5] and propose by their applications to move from their present and respective transmitter sites located approximately 20 miles northeast of the center of the city where a 2000 foot tower will be utilized jointly to support the several television transmitting antennas. The licensees and the present and proposed facilities are as follows (Applicants' Ex. 2, p. 1, Table 1, p. 1; Ex. 20, Fig. 3A):

Licensee	Call	Ch.	Present	Proposed
Reeves Broadcasting Corp.	WUSN-TV (ABC)	2	100 kw./790 ft.	100 kw./1860 ft.
First Charleston Corp.	WCIV (NBC)	4	100 kw./939 ft.	100 kw./1950 ft.
WCSC, Inc.	WCSC-TV (CBS)	5	100 kw./1000 ft.	100 kw./1950 ft.
South Carolina Educational Television Commission.	WITV (ETV)	7	28.8 kw./220 ft.	316 kw./1720 ft.

2. Charleston lies about midway on South Carolina's eastern boundary which extends in a northeast-southwest direction and is defined by the Atlantic Ocean. Charleston is a city of 65,925 persons and in addition to being the seat of Charleston County (pop. 216,382) it is also the central city of the Charleston Urbanized Area (pop. 160,113) and the Charleston Standard Metropolitan Statistical Area (SMSA) (pop. 216,382), the latter in 1960 consisting of Charleston County only.[6] Subsequent to the 1960 U.S. Census, the Charleston Standard

[5] These are the only four television channels allocated to Charleston. Aural facilities in Charleston include five AM stations (one daytime only) and two FM stations.

[6] Unless otherwise noted, all population data reflect the 1960 U.S. Census (Appl. Ex. 2, pp. 11, 16; Ex. 20, Table 3, p. 4).

Metropolitan Statistical Area was redefined to also include adjacent Berkeley County (pop. 38,196). Thus, the redefined Charleston SMSA contains a total of 254,578 persons.

Coverage—Charleston Commercial TV

3. Although there is some displacement in the location of the respective predicted Grade B contours of the three Charleston commercial VHF stations WUSN–TV, WCIV, WCSC–TV, operating as presently authorized, nevertheless, the coverage areas are not materially different. The Grade B contours over the land areas reach an average distance of approximately 70 miles northeast of the center of Charleston and some 63 to 65 miles in other directions. Operation as proposed by these three commercial VHF stations would result in substantial increments in Grade B coverage especially to the north and northwest without loss of existing Grade B coverage elsewhere. The Grade B contours of proposed WCIV and proposed WCSC–TV are congruent reaching about 105 miles to the northeast of Charleston, some 85 miles to the northwest and 66 miles to the southwest while WUSN–TV's proposed Grade B contour extends about 1.5 miles less in the several directions (Appl. Ex. 2, Figs. 1 and 2; Ex. 21, pp. 2, 3, 4, Figs. 1, 2, 3). Tabulated below are the populations and areas encompassed by the present and proposed Grade B contours of WUSN–TV, WCIV, and WCSC–TV. The land areas enclosed by these contours are essentially semi-circular in shape and lie entirely within South Carolina [7] (Appl. Ex. 2, Fig. 1, Ex. 21, p. 6, Figs. 1, 2, 3):

GRADE B COVERAGE

	Population			Area (sq. mi.)		
	WUSN–TV	WCIV	WCSC–TV	WUSN–TV	WCIV	WCSC–TV
Present	436,898	461,628	470,550	6,467	6,820	7,233
Proposed	781,033	803,902	803,902	10,600	11,233	11,233
Gain	344,135	342,274	333,352	4,133	4,413	4,000

4. As presently authorized WUSN–TV, WCIV, and WCSC–TV provide Grade B coverage to all of Charleston (pop. 216,382), Berkeley (pop. 38,196), and Dorchester (pop. 24,383) counties and partial coverage to numerous other surrounding counties. Under the proposed mode of operation each of the three stations would provide complete Grade B coverage of the following additional counties which are now partially included within the present Grade B contour: Georgetown (pop. 34,798), Williamsburg (pop. 40,932), Clarendon (pop. 29,490), and Colleton (pop. 27,816). Additionally, partial Grade B coverage would be provided to a large number of the surrounding counties (Appl. Ex. 2, Figs. 1 and 2). Tables A and B listed in Appendix III, pp. 12–15, respectively, show population and area coverage statistics

[7] The other half of what would be an essentially circular area for each station falls in the Atlantic Ocean (Appl. Ex. 2, Figs. 1, 2).

for the counties that are entirely or partially within the present and proposed Grade B contours of the three Charleston commercial VHF television stations (Appl. Ex. 2, Fig. 1, Tables 5 and 6).

5. No other television station provides Charleston with at least Grade B coverage save the four local television stations. The availability of other Grade B coverage to the areas within the present and proposed Grade B contours of Charleston's three commercial VHF stations is essentially the same and is set forth in the following table (Appl. Ex. 20, Fig. 2A; Ex. 27, pp. 9–10):

Station	Ch.	Location	Area Percentage	
			Present	Proposed
WJCL	22	Savannah, Ga	30	20
WVAN-TV	*9	do	10	8
WSAV-TV	3	do	12	10
WTOC-TV	11	do	11	9
WJBF	6	Augusta, Ga	15	15
WRDW-TV	12	do	13	13
WATU-TV	26	do	10	10
WIS-TV	10	Columbia, S.C	30	40
WOLO-TV	25	do	10	18
WNOK-TV	19	do	10	18
WBTW	13	Florence, S.C	15	30
WECT	6	Wilmington, N.C	5	15
WWAY-TV	3	do	2	8
WUNJ-TV	*39	do	0	5

While two or three Grade B services are now present in substantial portions of the gain area from stations in other cities other portions of the gain area receive five or more such services (Appl. Ex. 2, Figs. 1, 2).

Charleston Area Network Service

6. Each of the three commercial television stations in Charleston is network affiliated. The extent to which the present Grade B coverage areas of these stations is overlapped by the Grade B coverage areas of other television stations with the same network affiliations is depicted in the tables below (Appl. Ex. 2, Tables 11, 12, 13; Ex. 22, pp. 7, 8):

ABC NETWORK OVERLAP (PRESENT)

	Population	Percent	Area	Percent
WUSN-TV (Grade B)	436,898		6,467	
WTOC-TV*	47,520	10.8	759	11.7
WJBF overlap	24,833	5.6	959	14.8
WOLO-TV overlap	6,483	1.4	165	2.6
WBTW** overlap	30,542	6.9	897	13.8

*Carries ABC and CBS programs (Appl. Ex. 20, Fig. 7A; Ex. 2, Table 11). From 1954 to 1960, overlap with original WTOC-TV included 47,193 persons (10.8%) in an area of 678 square miles (10.4%).
**Carries CBS programs only according to a recent survey. Has contract to also carry ABC network (Tr. 449–451, 459, 1152–1161). Present facility is the same as original in 1954 (Appl. Ex. 2, Table II, p. 2).

CBS NETWORK OVERLAP (PRESENT)

	Population	Percent	Area	Percent
WCSC-TV (Grade B)	470,550		7,233	
WTOC-TV* overlap	48,629	10.3	877	12.1
WRDW-TV overlap	23,075	4.9	878	12.1
WNOK-TV overlap	25,306	5.3	392	5.4
WBTW** overlap	49,731	10.5	1,252	17.3

*Carries ABC and CBS programs (Appl. Ex. 20, Fig. 7A; Ex. 2, Table 12). From 1959 to 1960, overlap with original WTOC-TV included 47,654 persons (10.1% in area of 790 square miles (10.9%)).
**Carries CBS programs only according to recent survey. Has contract to also carry ABC network (Tr. 449-451, 459, 1152-1161). Present facility is the same as original in 1954 except for change from Channel 8 to 13 (Appl. Ex. 2, Table 11, p. 2).

NBC NETWORK OVERLAP (PRESENT)

	Population	Percent	Area	Percent
WCIV (Grade B)	461,628		6,820	
WIS-TV overlap	95,828	20.7	2,087	30.6
WSAV-TV overlap	51,201	11.0	1,141	16.7
WECT overlap	4,483	.9	235	3.4

Proposed Expansion of Network Service

7. Operating as proposed, each of Charleston's three commercial television stations would extend their network service to new areas presently without such network service. The enlargement of these network services within the respective Grade B contours is shown in the table below.

Station	Service	Population	Area*
WUSN-TV	First ABC	130,780	1,730
WICV	First NBC	3,046	140
WCSC-TV	First CBS	22,132	234
	First 3-Network	159,333	1,829

*Square miles.

A first ABC service would be provided in most of Florence County and in portions of counties adjacent thereto. A first NBC service would be furnished to small portions of four counties where they abut (Bamberg, Allendale, Hampton and Colleton). A first CBS service would be furnished in a portion of Horry County. The first three-network service would become available in Horry, Marion, and Florence Counties and in portions of counties adjacent thereto including small portions of Bamberg, Allendale, Hampton, and Colleton Counties—the former county areas being located at least 63 miles north of Charleston and the latter at least 62 miles to the west of the city.

Coverage—Charleston Educational TV

8. WITV, the non-commercial educational VHF television station in Charleston, commenced its present mode of operation on January 19, 1964. Operating with these facilities, WITV's predicted Grade B

contour reaches some 28 to 30 miles from the center of Charleston and to within 68 miles of Florence, South Carolina to the north and 72 miles short of Columbia, South Carolina to the northwest. A construction permit (CP) authorization granted February 18, 1970 [8] would extend the reach of WITV's Grade B contour progressively from about 52 miles in the southwest to a distance of 58 miles north of Charleston. Under the CP mode of operation the Grade B contour would fall within 38 miles of Florence and 47 miles of Columbia. A modification of the construction permit (Mod. CP) granted April 23, 1970 results in small changes in station coverage, namely, an extension of the Grade B coverage area by one or two miles to the north and northeast and to the southwest with a one mile decrease to the northwest. With this modified operation, WITV's Grade B contour reaches 60 miles in a north direction, 53 miles to the northwest, and 54 miles to the southwest. The contour will now fall short of Florence and Columbia by distances of 36 miles and 48.5 miles, respectively. Should WITV be permitted to operate as proposed a substantial increase in the station's Grade B coverage area would result. The proposed Grade B contour would extend 95 miles to the north, 78 miles to the northwest and 55 miles to the southwest and fall within 5 miles of Florence and 24 miles of Columbia (Appl. Ex. 22, Fig. 3B).

9. Coverage data for the several modes of WITV operation described above are set out in the following table (Appl. Ex. 22, p. 2; Tr. 446, 1154):

	Population	Area (Sq. mi.)
Present (Jan. 19, 1964)	246,757	1,629
CP (Feb. 18, 1970)	382,088	5,757
Gain	135,331	4,128
CP (Feb. 18, 1970)	382,088	5,757
Mod. CP (Apr. 23, 1970)	398,728	6,007
Gain	16,640	250
Mod. CP (Apr. 23, 1970)	398,728	6,007
Proposed	651,848	9,374
Gain	253,120	3,367
Total gain between present and proposed	405,091	7,745
First noncommercial educational service gained between present and Mod. CP	86,860	2,520
First noncommercial educational service gained between Mod. CP and proposed	22,085	458
Total first noncommercial educational service gained between present and proposed	108,945	2,978

Technical Aspects of Proposed Changes Respecting UHF

10. *Five basic areas involved.* The proposed changes in the facilities of WUSN–TV, WCIV, and WCSC–TV (the three Charleston commercial VHF television stations) and the resultant extension of their respective Grade B coverage areas would concomitantly increase over-

[8] This construction permit authorizes operation by WITV at the present site of WCSC–TV which is located six miles east of the center of Charleston. WITV presently operates in Charleston at a site about one mile east of the center of the city (Appl. Ex. 2, Table 1, Fig. 3; Appl. Ex. 22, p. 2; Tr. 445, 1154).

lap with the Grade B coverage areas of existing/prospective commercial UHF stations in Florence and Columbia, South Carolina and to a lesser degree with such stations in Wilmington, North Carolina, and Augusta and Savannah, Georgia. These several communities are variously located with respect to Charleston at distances ranging from approximately 85 miles (Savannah) to 150 miles (Wilmington).

The Florence Area

11. Florence, South Carolina is a city of 24,722 persons and the seat of Florence County (pop. 84,438). The city is not part of any urbanized area nor is the county included as part of a standard metropolitan statistical area. Geographically, Florence is situated in the northeast sector of the State and about 95 miles north of Charleston and 72 miles northeast of Columbia. Television broadcast facilities in Florence,[9] present and prospective, include the following:

Ch.	Call	Facility	Affiliation
13	WBTW	316 kw./790 ft.	CBS.
15[10]		Idle.	
21		do.	
33*	WJPM-TV	537 kw./790 ft.	Education.

[10] Channel 15 was formerly authorized for use by WPDT with 141 kw./910 ft. under a construction permit granted in 1968; however, this construction permit was subsequently cancelled on July 15, 1969.

12. Since Florence has no authorized commercial Channel 15 or Channel 21, it was assumed for the purposes of this proceeding that a prospective UHF station would operate with an effective radiated power of 141 kw and antenna height above average terrain of 910 feet, similar to the Channel 15 facility authorized WPDT before that station's construction permit was cancelled in 1969. The predicted Grade B contour of such a station operating on Channel 15 or 21 will extend to a radius of 43 miles in all directions and will encompass land areas not only in South Carolina but also in North Carolina (about 10%). All of the areas will be entirely encompassed by the Grade B contour of WBTW,[11] the commercial VHF station in Florence (Appl. Ex. 2, Fig. 1).

13. The present Grade B contours of WCSC–TV, WCIV, and WUSN–TV fall 26.5, 28 and 31 miles, respectively, short and to the south of Florence and overlap from 2 to 5% of the area enveloped by the Grade B contour of a prospective UHF station. The proposed Grade B contours of WCSC–TV, WCIV, and WUSN–TV would extend 4, 4, and 2.5 miles, respectively, beyond and to the north of Florence thereby providing the city with Grade B coverage for the first time in each instance. Under the proposed modes of operation, the Grade B contour of the Charleston stations would overlap about 40% of the area within the Grade B contour of a prospective station

[9] Florence has three AM stations and one FM station.
[11] The WBTW Grade B contour has a radius of approximately 58 miles (Appl. Ex. 2, Fig. 2).

in Florence (Appl. Ex. 2, Figs. 1, 2; Appl. Ex. 20, Fig. 2A; Appl. Ex. 27, pp. 2, 3).

14. In addition to service provided by WBTW, the local VHF station, Florence obtains Grade B coverage from WIS–TV in Columbia, South Carolina, and WECT in Wilmington, North Carolina, both of which are VHF stations [12] (Appl. Ex. 2, Fig. 2). As noted, *supra*, WCSC–TV, WCIV, and WUSN–TV will also provide Florence with Grade B coverage in the event their respective applications are granted.

15. In the area enclosed by the Grade B contour of a prospective Florence UHF facility other Grade B coverage would be provided by existing commercial television stations to the extent indicated in the following table. Network affiliations are also shown for those stations that have such ties (Appl. Ex. 2, Figs. 1, 2; Appl. Ex. 20, Fig. 7A; Appl. Ex. 27, pp. 3, 4).

Call	Location	Network	Coverage of prospective (percent), UHF [13]
VHF:			
WBTW	Florence, S.C.	CBS [14]	100
WIS–TV	Columbia, S.C.	NBC	60
WECT	Wilmington, N.C.	NBC	60
WWAY–TV	do	ABC	15
WSOC–TV	Charlotte, N.C.		15
WBTV	do		5
WGHP	Greensboro, N.C.		2
WUSN–TV	Charleston, S.C.	ABC	2(40)
WCIV	do	NBC	4(40)
WCSC–TV	do	CBS	5(40)
UHF:			
WCTU–TV	Charlotte, N.C.		16
WCCB–TV	do		15
WNOK–TV	Columbia, S.C.	CBS	12
WOLO–TV	do	ABC	12

[13] Percentages less than 100% are approximate. Percentages in ( ) represent proposed coverage.
[14] Although WBTW carries only CBS programs the station has a contract to also carry ABC programs (Tr. 449–451, 459, 1152–1161).

16. From two to eight Grade B services (commercial) are available to any one portion of the Grade B coverage area of a prospective Florence UHF station. "Two-service" areas exist in a substantial portion of the prospective station's coverage area. Such areas are served by WBTW and by either WIS–TV or WECT, all of which are VHF facilities (Appl. Ex. 2, Figs. 1, 2). The "eight-service" area lies in a small portion of Chesterfield County in the northwest sector of the prospective service area [15] (Appl. Ex. 2, Figs. 1, 2). Since Florence lies within the Grade B contours of WBTW (CBS), WIS–TV (NBC) and WECT (NBC), the city has available both CBS and NBC programs. Proposed WCSC–TV and proposed WCIV–TV will

[12] The Grade B contour of Station WIS–TV extends 18 miles beyond and to the east of Florence and that of Station WECT extends 7.5 miles beyond and to the west of the city (Appl. Ex. 2, Fig. 2).
[15] This area receives Grade B coverage from VHF stations WBTW, WIS–TV, WBTV, and WSOC–TV and from UHF stations WOLO–TV, WNOK–TV, WCCB–TV, and WCTU–TV. The Grade B contours of WUSN–TV, WCIV, and WCSC–TV, present and proposed, do not reach into this maximum service area (Appl. Ex. 2, Figs. 1, 2).

also, respectively, provide Florence with CBS and NBC programs. However, proposed WUSN–TV's coverage of Florence will provide that city with a first full ABC network service.

17. *Florence Area of Dominant Influence* (*ADI*).[16] This is a six-county area in South Carolina consisting of the following counties listed below together with identification of the county seats and population statistics (Columbia Joint Ex. 1, Figs. 1, 2, 3).

County	Population	County seat	Population
Florence	84,438	Florence	24,722
Darlington	52,928	Darlington	6,710
Marion	32,014	Marion	7,174
Chesterfield	33,717	Chesterfield	1,532
Marlboro	28,529	Bennettsville	6,963
Dillon	30,584	Dillon	6,173

Of the six counties in the Florence ADI only Florence, Darlington and Marion Counties are involved inasmuch as the Grade B contours of WUSN–TV, WCIV, and WCSC–TV operating as proposed would penetrate these three counties for the first time.[17] Florence County is bordered on the northwest by Darlington County and on the east by Marion County. This three-county area lies no less than 72 miles north of Charleston (Appl. Ex. 2, Fig. 2).

18. The following tabulation reflects the proportionate coverage of the three "penetrated" counties in the Florence ADI by commercial television stations, together with an indication of the grade of signal these stations provide in the respective county seats (Appl. Ex. 2, Figs. 1, 2, Table 6; Ex. 20. Fig. 2A; Ex. 27, p. 3):

Station	Ch.	Percent Grade B County Coverage (Area/pop.)				Coverage of County Seat***		
		Florence	Darlington[18]	Marion	Composite**	Florence	Darlington	Marion
WUSN–TV (prop.)*	2	95/94.8	7/10.1	70/54.5	60/—	B	---	B
WCSC–TV (prop.)*	5	97/96.4	10/12.5	75/72.4	65/—	B	---	B
WCIV (prop.)*	4	97/96.4	10/12.5	75/72.4	65/—	B	---	B
Florence UHF		100/100	100/100	100/100	100/100	PCG	PCG	PCG
WBTW	13	100/100	100/100	100/100	100/100	PCG	PCG	PCG
WIS–TV	10	90/—	100/100	20/—	70/—	B	A	---
WECT	3	70/—	40/—	100/100	70/—	B	B	B
WWAY–TV	6	0/0	0/0	40/—	10/—	---	---	---

*Present Grade B contours do not reach three-county area.
**All three counties combined.
***PCG=Principal City Grade; A=Grade A; B=Grade B.

[16] A term of Art devised and employed by audience measurement enterprises and apparently accepted in the Broadcast industry as a useful tool of measuring audience viewing on a county by county basis throughout the United States.

[17] These contours barely penetrate the southern tip of Dillon County which generally borders Florence County on the northeast (Appl. Ex. 2, Fig. 2).

[18] There is a slight penetration of Darlington County only by the Grade B contours of WSOC–TV, WCTU–TV, and WCCB–TV in Charlotte, North Carolina and by WNOK–TV and WOLO–TV in Columbia, North Carolina (Appl. Ex. 22, Map D).

The Columbia Area

19. Columbia, South Carolina, is a city of 97,433 persons, the seat of Richland County (pop. 200,102), and the capital of the state. Columbia is also the central city of the Columbia Urbanized Area (pop. 162,601) and of the Columbia Standard Metropolitan Statistical Area (pop. 260,828) which is comprised of Richland and Lexington Counties. The city is situated near the center of the state about 102 miles northwest of Charleston and 72 miles southwest of Florence (Appl. Ex. 2, Fig. 1). Television broadcast facilities in Columbia,[19] present and prospective, are shown in the following table:

Ch.	Call	Facility [20]	Affiliation
10	WIS–TV	316 kw./1550 ft.	NBC.
19	WNOK–TV	1,046 kw./640 ft.	CBS.
25	WOLO–TV	871 kw./620 ft.	ABC.
35*	WRLK–TV	513 kw./1030 ft.	Educational.
57		Idle.	

*Footnote omitted in printing.

[20] Horizontal effective radiated power shown. Maximum lobe powers for the UHF stations are as follows WNOK–TV—1,250 kw; WOLO–TV—1,205 kw; WRLK–TV—617 kw.

20. The areas encompassed by the predicted Grade B contours of WNOK–TV and WOLO–TV operating in accordance with their present authorizations are nearly identical and lie entirely within South Carolina. With respect to the center of Columbia, the radial reach of the area varies between approximately 49 and 54 miles. Again, for the purpose of this proceeding, a prospective station on vacant Channel 57 is assumed to provide Grade B coverage similar to that of the other two commercial UHF stations in Columbia. The Grade B contour of WIS–TV, the commercial VHF station in Columbia, includes all of the area within the Grade B contours of the UHF stations and extends from 4 to 38 miles beyond (Appl. Ex. 20, Fig. 2A).

21. The present and proposed Grade B contours of the three Charleston commercial VHF stations (WCSC–TV, WCIV, and WUSN–TV) penetrate the Grade B coverage area of WNOK–TV/WOLO–TV. The present Grade B contours of WCSC–TV, WCIV and WUSN–TV fall 36, 37 and 38 miles, respectively, short and to the southeast of Columbia and overlap 5 to 6% of the WNOK–TV/WOLO–TV Grade B coverage area. In the case of the proposals, the Grade B contours of WCSC–TV/WCIV would reach to within 14.5 miles of Columbia and that of WUSN–TV would fall short of the city by 16 miles. The proposed overlap would involve from 22 to 25% of the WNOK–TV/WOLO–TV Grade B coverage area (Appl. Ex. 2, Figs. 1, 2; Appl. Ex. 20, Fig. 2A; Appl. Ex. 27, p. 1).

22. The five-county area in which WNOK–TV/WOLO–TV expect to suffer maximum impact from the contemplated expansion of the commercial VHF facilities in Charleston consists of the following

[19] Columbia also has five AM stations and three FM stations.

counties which are listed together with their county seats.[21] (Appl. Ex. 2, pp. 11, 12, Table 4, Fig. 2; Col. Joint Ex. 1, Fig. 1:)

County	Population	County Seat	Population
Calhoun*	12,256	St. Matthews	2,433
Clarendon**	29,490	Manning	3,917
Lee*	21,832	Bishopville	3,586
Orangeburg*	68,559	Orangeburg	13,852
Sumter*	74,941	Sumter	23,062

*Within Columbia ADI.
**Within Charleston ADI.

Lee and Sumter Counties adjoin the eastern boundary of Richland County where Columbia is located. Calhoun County adjoins the southeastern boundary of Richland County. Clarendon County adjoins Sumter County on the south and Calhoun County on the east. Orangeburg County adjoins Calhoun County on the south. The five-county area extends in an arc clockwise from east of Columbia to south of the city and lies largely in the direction of Charleston but closer to Columbia (Appl. Ex. 2, Figs. 1, 2).

23. Under present authorizations, the Grade B contours of WNOK–TV/WOLO–TV include all of Calhoun County, most of Lee, Sumter, and Orangeburg Counties, and about one-third of Clarendon County (Appl. Ex. 2, Figs. 1, 2). Taking into account the small displacement in contours, the following table shows the number of persons encompassed in each county by the respective Grade B contours (Appl. Ex. 20, Table 2):

County	WNOK–TV		WOLO–TV	
	Population	Percent	Population	Percent
Clarendon	15,878	54	12,529	43
Calhoun	12,256	100	12,256	100
Sumter	72,414	97	71,940	96
Lee	19,905	91	19,904	91
Orangeburg	54,891	80	53,841	78
Five-county [22]	175,344	85	170,470	83

[22] The five-county area is entirely within the Grade B contour of WIS–TV.

The extent to which the present and proposed operations of the three Charleston commercial VHF television stations provide Grade B coverage to the populations in these counties is shown in the following table (Appl. Ex. 2, Tables 5, 6).

[21] Ancillary to this finding is the testimony of the Columbia stations' engineering witness who stated that where both UHF and VHF signals are present, UHF suffers some handicap due to poor receiving antennas, transmission line loss between antenna and receiver, disparity of UHF tuners, and antenna orientation (Col. Joint Ex. 1, p. 10). He further contends that in the absence of a satisfactory VHF signal the tendency is to install a more efficient UHF antenna (Tr. 100). Moreover, it is his view that considering the quality of the WNOK–TV/WOLO–TV signals in the several counties, the advantage the two UHF stations now enjoy would be materially decreased if the Charleston VHF stations were allowed to operate with the proposed facilities.

GRADE B POPULATION COVERAGE

County	WUSN-TV				WCIV		WCSC-TV		WCIV/WCSC-TV	
	Pres.	Percent	Prop.	Percent	Pres.	Percent	Pres.	Percent	Prop.	Percent
Clarendon	12,263	42	29,490	100	20,121	68	21,912	74	29,490	100
Calhoun	26	-------	9,858	81	523	4	1,046	9	10,385	85
Sumter	0	0	66,767	89	0	0	0	0	70,261	94
Lee	0	0	7,150	33	0	0	0	0	9,446	43
Orangeburg	22,016	32	57,971	85	24,260	35	25,404	37	58,988	86
Five-County	34,305	17	171,236	83	44,904	22	48,362	23	178,570	86

24. In the above-five county area each of the county seats is also the largest community in the county and has an approximately central location in the county (Col. Joint Ex. 1, p. 4). The table in Appendix III, pages 8 and 9, lists signal grade and/or field strength in each of the county seats from the Charleston VHF stations (present and proposed) and from those other stations that provide at least Grade B coverage therein and also the extent of estimated Grade B coverage to the county areas (Appl. Ex. 2, Fig. 1, Table 4; Appl. Ex. 20, Fig. 2A; Col. Joint Ex. 1, pp. 18; Col. Joint Ex. 3).

25. There is the following additional detail with respect to each of the county seats in the five-county area (Appl. Ex. 2, Figs. 1, 2; Col. Joint Ex. 1): (a) Bishopville, the county seat of Lee County, is located 45 miles east northeast of Columbia, 27 miles west of Florence and 97 miles north northwest of Charleston.[23] The Grade B contours of the two Columbia UHF stations, WNOK–TV and WOLO–TV, extend 6 miles beyond Bishopville, Columbia VHF station WIS–TV and Florence VHF Station WBTW provide principal city grade signals over the community. The Grade B contours of Charleston VHF WCSC–TV, WCIV, and WUSN–TV presently fall 31 to 35 miles short of Bishopville; the proposed Grade B contours would fall 3 to 4.5 miles short of the community. (b) Sumter, the county seat of Sumter County, is located 37 miles east of Columbia, 38 miles southwest of Florence and 80 miles north northwest of Charleston.[24] The Grade B contours of the two Columbia UHF stations, WNOK–TV and WOLO–TV, extend 13 miles beyond Sumter. Columbia VHF station WIS–TV places a principal city grade signal over the community. The Grade B contour of Florence VHF Station WBTW falls 14 miles beyond Sumter. The Grade B contours of the three Charleston VHF stations fall 13 to 17 miles short of Sumter; the proposed Grade B contours would fall 11 to 12.5 miles beyond the community. According to Applicants' engineer, many television receiving antennas in Sumter are directed toward WBTW in Florence (Appl. Ex. 2, p. 24). (c) St. Matthews, the county seat of Calhoun County, is located 25 miles

[23] Bishopville is 44.5 miles east northeast of WNOK–TV, 43 miles east northeast of WOLO–TV, 30 miles east of WIS–TV and 89 miles north northwest of the proposed joint site (Col. Joint Ex. 1; Appl. Ex. 2, Figs. 2, 3).

[24] Sumter is 38 miles east of WNOK–TV, 36.5 miles east of WOLO–TV, 27.5 miles east southeast of WIS–TV, 42 miles west of WBTW and 73 miles north northwest of the proposed joint site (Col. Joint Ex. 1; Appl. Ex. 2, p. 24, Figs. 2, 3).

109-026—73——6

southeast of Columbia, 69 miles east of Augusta and 75 miles northwest of Charleston.[25] Calhoun County extends to within 6 miles of Columbia. The two Columbia UHF stations, WNOK–TV and WOLO–TV, place a Grade A signal over St. Matthews and Columbia VHF Station WIS–TV places a principal grade signal over the community. The Grade B contours of the two Augusta VHF Stations, WRDW–TV and WJBF, extend 7.5 and 9.5 miles beyond St. Matthews while the like contour of Augusta's UHF station, WATU–TV falls just beyond the city. The Grade B contours of the three Charleston VHF stations presently fall 11 to 14 miles short of St. Matthews; however, the proposed Grade B contours would fall 7.5 to 9 miles beyond the community. The two Columbia UHF stations would retain the dominant signals in St. Matthews. According to Applicants' engineer, roads from St. Matthews lead to Columbia and television receiving antennas presently indicate a bias toward Columbia (Appl. Ex. 2, p. 26; Tr. 558). (d) Orangeburg, the county seat of Orangeburg County, is located 34.5 miles south of Columbia, 62 miles east of Augusta, and 70 miles northwest of Charleston.[26] The Grade B contours of the two Columbia UHF stations, WNOK–TV and WOLO–TV, extend 14 miles beyond Orangeburg, and Columbia VHF Station WIS–TV places a principal city grade signal over the community. The Grade B contours of Augusta VHF Stations WRDW–TV and WJBF extend 15 to 18 miles beyond Orangeburg and that of the UHF station, WATU–TV, extends 8 miles beyond the city. Although the Grade B contours of the three Charleston VHF stations fall 6.5 to 8.5 miles short of Orangeburg, the proposed Grade B contour of the stations would fall 8 to 9.5 miles beyond Orangeburg. According to applicants' engineer, orientation of television receiving antennas presently indicate great reliance on Augusta stations with only a few oriented toward Charleston (Appl. Ex. 2, p. 24; Tr. 556). (e) Manning, the county seat of Clarendon County, is located 48 miles southeast of Columbia, 42 miles southwest of Florence, and 62 miles north northwest of Charleston.[27] Although the Grade B contours of the two Columbia UHF stations, WNOK–TV and WOLO–TV barely include Manning, the VHF Station, WIS–TV, places a principal city grade signal over the community. The Grade B contour of Florence VHF Station WBTW extends 10 miles beyond Manning. In the case of the three Charleston VHF stations, their Grade B contours presently fall in Manning (WUSN–TV) or 2.5 to 3.5 miles beyond the community. Operating as proposed, the Grade B contours of these stations would extend 28 to 29.5 miles beyond the community and the signal in Manning would be increased.

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[25] St. Matthews is 28.5 miles southeast of WNOK–TV and WOLO–TV, 32 miles south of WIS–TV and 77.5 miles northwest of the proposed joint site (Col. Joint Ex. 1; Appl. Ex. 2, Figs. 2, 3).

[26] Orangeburg is 39.5 miles south of WNOK–TV, 39 miles south of WOLO–TV, 45.5 miles south of WIS–TV, 60 to 62 miles east of WRDW–TV and WJBF and 76 miles northwest of the proposed joint site (Col. Joint Ex. 1; Appl. Ex. 2, Figs. 2, 3, p. 24).

[27] Manning is 51 miles east southeast of WNOK–TV, 49.5 miles east southeast of WOLO–TV, 43 miles east southeast of WIS–TV, 65 miles northwest of the present Charleston sites, and 56 miles northwest of the proposed joint site (Col. Joint Ex. 1; Appl. Ex. 2, Figs. 2, 3, p. 21).

26. Columbia's three commercial TV stations since their inception have undergone expansion of operating facilities. WNOK–TV initially commenced operation September 1, 1953 on Channel 67 with 74.1 kw/630 ft. On June 12, 1961, WNOK–TV changed to Channel 19 and operated with 214 kw (245 kw-max.)/640 ft. Subsequently, on July 17, 1968, the station expanded to its present facility, namely, 1,046 kw (1250 kw-max)/640 ft. In the case of WOLO–TV, operation began on September 29, 1961 on Channel 25 with 191 kw (195 kw-max)/440 ft.[28] On August 4, 1964, WOLO–TV changed to 174 kw (178 kw-max)/610 ft. and in November of 1969, the facilities were modified to that now employed by the station—871 kw (1205 kw-max)/620 ft. WIS–TV, the third station, first began broadcasting on assigned VHF Channel 10 with 269 kw/640 ft. on November 7, 1953, about two months after service was inaugurated by WNOK–TV. At that time, the Grade B contour of WIS–TV extended to a radius of about 53 miles and completely encompassed the Grade B contour of WNOK–TV and included the greater part of the five penetrated counties. When the second UHF station, WOLO–TV, commenced operation in 1961, its Grade B coverage area was entirely within the WNOK–TV Grade B contour which was likewise completely encompassed by WIS–TV's Grade B contour (Appl. Ex. 2, Figs. 1, 2).

27. On November 2, 1964, WIS–TV moved to a new transmitter site located 17 miles northeast of Columbia and commenced its present operation with 316 kw/1550 ft. (Col. Joint Ex. 1, Fig. 3). WIS–TV's present Grade B contour sweeps a radius of approximately 73 miles to completely encompass the present Grade B contours of WNOK–TV/WOLO–TV and all of the five penetrated counties. In addition, the contour includes portions of the counties of Colleton, Dorchester, and Berkeley which are adjacent to Charleston County and within the Charleston ADI and falls within 30 miles of Charleston (Appl. Ex. 2, Fig. 2). Within its present Grade B contour WIS–TV includes the following proportionate parts of the listed Areas of Dominant Influence (ADI) (Col. Joint Ex. 3):

ADI	*WIS–TV area coverage* (percent)*
Augusta, Ga	46.3
Charleston, S.C	21.7
Charlotte, N.C	96.3
Columbia, S.C	100
Florence, S.C	72.1
Greenville, S.C.—Spartanburg, S.C	22.4
Asheville, N.C	-----

*The WIS–TV Grade B contour does not include any part of the Savannah, Ga., ADI or the Wilmington, N.C., ADI.

28. The predicted Grade B coverage of the three Columbia television stations operating under the several authorizations since the

[28] Operation on Channel 25 was first inaugurated by WCOS–TV in 1953 and subsequently ceased operation in 1956. The channel was reactivated in 1961 under the call WCCA–TV and in 1964 the call was changed to WOLO–TV.

inception of service is summarized below [29] (Appl. Ex. 2, Tables 1, 2, Figs. 1, 2; Ex. 22, pp. 3, 4, Table 3; Col. Joint Ex. 1, Figs. 1, 2, 3).

	Population	Area (sq. mi.)
WNOK-TV:		
Sept. 1953	342,102	3,529
June 1961*	474,978	4,817
Gain	132,876	1,288
June 1961*	474,978	4,817
July 1968	635,223	8,137
Gain	160,245	3,320
5-county gain	51,055	1,597
Sept. 1953	342,102	3,529
July 1968	635,223	8,137
Gain	293,121	4,608
WOLO-TV:		
Sept. 1961	330,615	3,353
Aug. 1964*	444,176	4,706
Gain	113,561	1,353
Aug. 1964*	444,176	4,706
Nov. 1969	630,596	7,890
Gain	186,420	3,184
5-county gain	50,954	1,541
Sept. 1961	330,615	3,353
Nov. 1969	630,596	7,890
Gain	299,981	4,537
WIS-TV:		
Nov. 1953	681,717	9,073
Nov. 1964	1,190,369	16,428
Gain	508,652	7,355
5-county gain	19,591	503

*Coverage based on horizontal radiated power. Use of maximum lobe power would increase these figures by 2 or 3% (Tr. 1098).

29. Set forth in Appendix III are the population and area statistics of the gain in county coverage by WNOK–TV and WOLO–TV resulting from the latest increase in station facilities (Appl. Ex. 2, Table 7).

30. In addition to local competition from WIS–TV since 1953, when WNOK–TV initially commenced operation, the evidence reflects that penetration of the UHF station's Grade B coverage area by the Grade B contours of VHF stations in adjacent cities progressively increased from that time to the present. In 1953 VHF station WBTV in Charlotte, N.C. penetrated the northern sector of WNOK–TV's Grade B contour to a point 16 miles north of Columbia. In 1954 there was penetration of the area by the Grade B contour of WRDW–TV and WJBF, Augusta, Ga., (both VHF) in the southwestern sector, the Grade B contour of WRDW–TV approaching to within 11.5 miles of Columbia and the like contour of WJBF to within 2.5 miles of the city. Also in 1954 the Grade B contour WBTW in Florence, S.C. (VHF) penetrated the eastern sector of WNOK–TV's Grade B contour to approach within 17 miles of Columbia. By the end of 1954, a substantial portion of the WNOK–TV Grade B contour area was also part of the coverage area of several other stations. In 1957 WSOC–TV in Charlotte, N.C. (VHF) penetrated with its Grade B contour the

[29] Applicants' engineer contends that from his study of terrain profiles extending 32 to 42 miles in various directions from WNOK–TV/WOLO–TV he would expect some restrictions in coverage from that predicted due to shadowing; however, no showing of coverage was made pursuant to such premise (Appl. Ex. 2, pp. 9, 10, Figs. 10–34; Tr. 512–515).

northern sector of WNOK–TV's coverage area to about the same extent as WBTV. In 1958, WJBF (VHF) extended its Grade B contour over the community of Columbia to a point 10 miles beyond the city so that most of the WNOK–TV Grade B coverage area was penetrated and included by the Grade B contours of adjacent city VHF stations. Up until 1958, a number of other VHF stations also provided Grade B coverage in the Columbia UHF station's coverage area, but these areas fell within the above-described contours. In 1961, UHF Station WOLO–TV initially commenced operation in Columbia. At that time WOLO–TV's Grade B contour was completely encompassed by that of WNOK–TV (UHF) and WIS–TV (VHF). In 1964 WOLO–TV increased its facilities to essentially duplicate the WNOK–TV coverage. WNOK–TV and WOLO–TV again changed to similar facilities and coverage in 1968 and 1969, respectively.[30] A number of adjacent city VHF and UHF stations initially commenced operation or changed facilities after 1961 and as a result there was further intrusion with the WNOK–TV/WOLO–TV coverage areas. From the foregoing, it is clear that the greater portion of the Grade B service areas of WNOK–TV and WOLO–TV have been overlapped by adjacent city VHF stations from 1958 and 1961, respectively, to the present time (Appl. Ex. 2, pp. 17–19, Figs. 1, 2, Table 1, pp. 1 to 6; Appl. Ex. 22, Table 3, Maps A, B, C, D).[31]

31. When WNOK–TV inaugurated operation on September 1, 1953, the station operated on now deleted Channel 67 with 74.1 kw/620 ft. At that time the station's Grade B coverage area was overlapped only by the Grade B contour of an adjacent city VHF station, namely WBTV in Charlotte, North Carolina. Of the 342,102 persons in the 3,529 square mile area encompassed by WNOK–TV's Grade B contour, WBTV's Grade B contour included 19,961 persons in 524 square miles or 5% of the population and 15% of the area therein. The remainder of the population (322,141 persons) and area (3,005 square miles) did not fall within the Grade B contour of any other station (Appl. Ex. 2, Table 1; Appl. Ex. 22, pp. 3, 9, Table 3, p. 4 (revised), Map A). As previously noted, about two months after the inception of operation by WNOK–TV, WIS–TV began operation in Columbia on VHF Channel 10 with 269 kw/640 ft. and its Grade B contour completely encompassed the WNOK–TV Grade B contour (Appl. Ex. 2, Fig. 1).

32. In the case of WOLO–TV, initial operation began September 29, 1961, on UHF Channel 25 with 191 kw (195 kw–max.)/440 ft. Portions of its Grade B coverage area were then overlapped by the farthest extending Grade B contours of four VHF stations in adjacent markets in addition to complete Grade B coverage from both WNOK–TV and WIS–TV in Columbia (Appl. Ex. 2, Fig. 1). The extent to which the adjacent city stations penetrated the WOLO–TV Grade B coverage area is shown in the table below (Appl. Ex. 2, Table 1; Appl. Ex. 22, pp. 3, 9, Table 3, p. 3 (revised), Map B).

[30] At this point, both stations extended their Grade B areas into a minor overlap situation (about 5% of their Grade B areas) with the three Charleston commercial stations (Appl. Ex. 2, Figs. 1 and 2).

[31] The history of all pertinent stations is set forth in Appendix III.

GRADE B OVERLAP OF WOLO-TV

	Population	Percent	Area*	Percent
WOLO-TV (Grade B)	330,615		3,353	
WJBF Augusta	224,121	79	1,939	61
WSOC-TV Charlotte	17,209	5	549	17
WBTW Florence	33,728	10	569	17
WFBC-TV Greenville	574	(**)	31	(**)

*Square miles.
**Less than 1 percent.

Not overlapped by the Grade B contour of adjacent city stations was an area containing 17,685 persons or 5% of the population within WOLO-TV Grade B contour.

33. In the area encompassed by the Grade B contours of WNOK-TV/WOLO-TV, other Grade B coverage is provided by existing commercial television stations as shown in the table below. The table also shows the extent to which Grade B coverage would be provided by the three Charleston commercial VHF stations operating as proposed (Appl. Ex. 2, Figs. 1, 2, Table 1; Appl. Ex. 22, Table 3).

Call	Location	Percentage of WNOK-TV/WOLO-TV*	
		Area	Population
VHF:			
WIS-TV	Columbia, S.C.	100	100
WJBF	Augusta, Ga.	56	62
WRDW	do.	54	50
WBTV	Charlotte, N.C.	21	13
WSOC-TV	do.	21	13
WBTW	Florence, S.C.	22	22
WSPA-TV	Spartanburg, S.C.	14	8
WFBC-TV	Greenville, S.C.	10	10
WCSC-TV	Charleston, S.C.	6	4
WCSC-TV (prop.)		25	25
WCIV	Charleston, S.C.	5	4
WCIV (prop.)		25	25
WUSN-TV	Charleston, S.C.	5	4
WUSN-TV (prop.)		22	20
UHF:			
WATU-TV	Augusta, Ga.	45	40
WCTU-TV	Charlotte, N.C.	20	20
WCCB-TV	do.	21	20

*As previously noted, WNOK-TV and WOLO-TV have essentially the same Grade B coverage areas. In some instances area percentage estimated from coverage maps.

34. The city of Columbia, in addition to being served by its local television facilities, also is included within the Grade B contours of VHF stations WJBF and WRDW-TV and UHF station WATU-TV, all in Augusta, Georgia. The Grade B contour of WJBF, WRDW-TV, and WATU-TV extend, respectively, 11 miles, 9 miles, and 3 miles beyond and to the east of Columbia (Appl. Ex. 2, Fig. 2). Elsewhere in the Grade B coverage areas of WNOK-TV/WOLO-TV available coverage from other existing commercial television varies in number from one to seven including the contribution from WIS-TV, the VHF station in Columbia (Appl. Ex. 2, Fig. 2). Under

present operating conditions there is an elongated area [32] containing 18,481 persons who obtain at least Grade B coverage only from WNOK–TV, WOLO–TV and WIS–TV in Columbia. Should the Charleston VHF stations operate as proposed this area would be diminished and the population therein would be reduced to 16,181 persons [33] (Appl. Ex. 22, Table 3, pp. 1, 2, Map D). The several areas where coverage is obtained from the maximum number of stations will not be affected by the proposed expansion of the facilities of the Charleston stations (Appl. Ex. 20, Fig. 2A).

Columbia Area Network Service

35. Each of the three commercial television stations in Columbia is network affiliated and would suffer enlarged network duplication in the event the proposals of WCSC–TV, WUSN–TV, and WCIV, the three Charleston commercial television stations, were implemented. The Grade B contour of WNOK–TV, a CBS affiliate, is overlapped by the Grade B contours of five other CBS affiliated stations including WCSC–TV. In the case of WOLO–TV, an ABC affiliated station, the Grade B contour is overlapped by three other ABC stations, including WUSN–TV. WIS–TV is NBC affiliated and its Grade B contour is overlapped by four other NBC stations, including WCIV. The extent of overlap is set out in the following tabulation [34] (Appl. Ex. 2, Tables 8, 9, 10, Figs. 4, 5, 6; Appl. Ex. 22, pp. 5, 6, 7, Table 3, Map D; Appl. Ex. 27, p. 2):

CBS NETWORK OVERLAP

Overlap from	Population	Percent	Area*	Percent
WNOK–TV (Grade B)	635,223		8,137	
WRDW–TV Augusta	375,245	60	4,139	54
WSPA–TV Spartanburg	55,528	8	1,187	14
WBTV Charlotte	86,203	13	1,759	21
WBTW Florence	138,112	22	1,810	22
WSCS–TV Charleston	28,518	4	525	6
WCSC–TV (prop.)	164,655	25	2,079	25

*Square miles.

ABC NETWORK OVERLAP

Overlap from	Population	Precent	Area*	Percent
WOLO–TV (Grade B)	630,596		7,890	
WJBF Augusta	388,997	61	4,233	52
WCCB–TV Charlotte	84,631	13	1,786	23
WBTW Florence**	135,899	21	1,826	23
WUSN–TV Charleston	6,483	1	165	5
WUSN–TV (prop.)	123,213	21	1,557	22

*Square miles.
**Carries CBS programs only according to a recent survey; however, station has contract to also carry ABC network programs (Tr. 449–451, 459, 1152–1161).

[32] This area is comprised of portions of the following seven counties: Fairfield, Kershaw, Richland, Sumter, Calhoun, Clarendon, and Orangeburg (Appl. Ex. 22, Map D).
[33] The diminished area includes only portions of the counties of Fairfield, Kershaw, and Richland (Appl. Ex. 22, Map D).
[34] No showing was made of the population and area to which WNOK–TV and WIS–TV furnish the only network service.

NBC NETWORK OVERLAP

Overlap from	Population	Percent	Area*	Percent
WIS–TV (Grade B)	1,190,369		16,428	
WFBC–TV Greenville	125,391	11	2,188	13
WSOC–TV Charlotte	359,419	30	5,046	31
WECT Wilmington	117,246	10	1,576	10
WCIV Charleston	95,828	8	2,087	13
WCIV (prop.)	332,134	28	5,036	31

*Square miles.

The Wilmington, North Carolina and Augusta and Savannah, Georgia Areas [35]

36. *Wilmington.* The present Grade B contours of WCSC–TV, WCIV, and WUSN–TV fall 88, 90 and 95 miles, respectively, short of Wilmington and the proposed contours of the stations fall 46, 46 and 47.5 miles, respectively, short of the city. Wilmington has one unoccupied UHF commercial channel (Ch. 29) which is also the only commercial UHF channel assigned to the city. Assuming a prospective Channel 29 facility similar to that of UHF educational station WUNJ–TV (Ch. 39) in Wilmington, the present Grade B contours of the three Charleston commercial stations would not overlap the Grade B contour of such an operation. However, the proposed contours would overlap about 5% of the area.[36] The extent of overlap of the Grade B contour of a prospective Channel 29 facility by the Grade B contours of other commercial stations would be as follows: (Appl. Ex. 27, pp. 4, 5):

Station	Ch.	Location	Ch. 29 overlap (percent)
WNBE	12	New Bern, N.C.	40
WTVD	11	Durham, N.C.	25
WRDU–TV	28	do	30
WRAL–TV	5	Raleigh, N.C.	(*)
WNCT–TV	9	Greenville, N.C.	5
WBTW	13	Florence, S.C.	15
WECT	6	Wilmington, N.C.	100
WWAY–TV	3	do	100

*Less than 5 percent.

37. *Augusta.* The present Grade B contours of WCSC–TV, WCIV, and WUSN–TV fall 61.5, 62 and 62.5 miles, respectively, short of Augusta and the proposed fall 49, 49 and 50.5 miles, respectively, short of the community. Of the two UHF channels assigned Augusta, Channel 26 is utilized by WATU–TV and Channel 54 is unoccupied.

[35] Because of the lesser degree of impact on the UHF stations, present and prospective, in the three markets, engineering evidence is not as extensive as that submitted with respect to the Florence and Columbia markets.

[36] Assuming a prospective operation similar to VHF commercial stations WECT and WWAY–TV in Wilmington, present overlap would be less than 5% and proposed overlap would be less than 15%. The three Wilmington stations operate from three different transmitter sites as reflected in the respective contour configurations (Appl. Ex. 2, Figs. 1, 2; Appl. Ex. 20, Fig. 2A; Appl. Ex. 22, Fig. 3B; Appl. Ex. 27).

The present Grade B contours of the three Charleston commercial VHF stations overlap about 5% of the area within the WATU–TV Grade B contour. Operating as proposed, the Charleston stations would increase the overlap to 10%. Assuming an operation on Channel 54 similar to WATU–TV, the present and proposed overlap from the Charleston stations would be essentially the same. The Grade B contours of other existing commercial television stations overlap the Grade B contour of WATU–TV as follows: (Appl. Ex. 2, Fig. 2A; Ex. 27, pp. 5, 6).

Station	Ch.	Location	WATU–TV overlap (percent)
WIS–TV	10	Columbia, S.C.	35
WNOK–TV	19	do	26
WOLO–TV	25	do	25
WBTV	3	Charlotte, N.C.	(*)
WFBC	4	Greenville, S.C.	10
WSPA	7	Spartanburg, S.C.	10
WJCL	22	Savannah, Ga.	20
WSAV	3	do	5
WTOC	11	do	4
WMAZ–TV	13	Macon, Ga.	5
WJBF	6	Augusta, Ga.	100
WRDW–TV	12	do	100

*Less than 1 percent.

38. *Savannah.* The present Grade B contours of Stations WCSC–TV, WCIV, and WUSN–TV fall 16, 17, and 19 miles, respectively, short of Savannah and the proposed fall 16, 16 and 17.5 miles, respectively, short of the community. The Grade B contours of the three Charleston commercial stations overlap the Grade B contours of Savannah UHF Station WJCL operating on Channel 22 equal to 15% of WJCL's Grade B area while the proposed contours would overlap 20% of such area. Channel 22 is the only UHF assignment in Savannah. The Grade B contours of other existing stations overlap the Grade B contour of WJCL as follows [37] (Appl. Ex. 27, pp. 6, 7):

Station	Ch.	Location	WJCL Overlap (percent)
WJBF	6	Augusta, Ga.	35
WRDW–TV	12	do	35
WATU–TV	26	do	30
WFGA	12	Jacksonville, Fla.	(*)
WJKS–TV	17	do	(*)
WJXT	4	do	(*)
WIS–TV	10	Columbia, S.C.	2
WSAV	3	Savannah, Ga.	(**)
WTOC	11	do	(**)

*Less than 2 percent.
**Not given. WJCL Grade B contour includes all the area within the WSAV and WTOC–TV Grade B contours.

[37] No present or proposed Grade B overlap is involved with UHF Station WANC–TV in Asheville, N.C., or any prospective UHF stations in the Greenville-Spartanburg-Asheville area. No present or proposed Grade B overlap is involved with UHF Stations WCCB–TV and WCTU–TV in Charlotte, N.C. The Grade B contour of Station WIS–TV in Columbia, S.C., overlaps 30% of the Grade B area of UHF Stations WCCB–TV and WCTU–TV. UHF stations WNOK–TV and WOLO–TV in Columbia overlap 10% of WCCB–TV and 15% of WCTU–TV (Appl. Ex. 27, pp. 7, 8, 9).

Economic Information and Data Relating to UHF Impact Issue

39. The Area of Dominant Influence (ADI) of the Columbia, South Carolina, television stations consists of the "metro area," counties of Richland and Lexington (78,200 TV households) and the following additional counties (with the number of TV households shown in parentheses): Sumter (18,100), Orangeburg (16,500), Kershaw (8,700), Fairfield (4,400), Lee (4,200) and Calhoun (2,700) (Palmetto Ex. No. 1, p. 10). Clarendon County (5,400) had been in the Columbia ADI, but was shifted in 1969 to the Charleston ADI (Columbia Joint Ex. No. 2, pp. 1, 3, 10).

40. The distribution of the Columbia market television revenues and income for the years 1964 through 1969 is shown in the following table:

DISTRIBUTION OF COLUMBIA TELEVISION REVENUES AND INCOMES [38]

	Columbia	WIS–TV		WNOK–TV		WOLO–TV	
		Amount	Percent	Amount	Percent	Amount	Percent
B/c revenues:							
1969	$3,750,003	$2,799,751	74.7	$861,976	17.7	$288,276	7.7
1968	3,387,724	2,513,297	74.2	588,879	17.4	285,548	8.4
1967	2,864,911	2,148,759	75.0	490,985	17.1	225,167	7.9
1966	2,786,251	2,076,756	74.5	514,058	18.4	195,437	7.0
1965	2,492,795	1,885,127	75.6	423,328	17.0	184,340	7.4
1964	2,260,303	1,705,151	75.4	380,476	16.8	174,676	7.7
Network sales:							
1969	726,789	504,029	69.4	118,718	16.3	104,042	14.3
1968	734,810	521,353	71.0	107,541	14.6	105,916	14.4
1967	687,790	483,227	70.3	109,680	15.9	94,883	13.8
1966	662,732	446,141	67.3	110,408	16.7	106,183	16.0
1965	633,042	431,794	68.2	106,345	16.8	94,903	15.0
1964	574,663	394,598	68.7	102,819	17.9	77,246	13.4
Spot sales:							
1969	2,012,541	1,832,200	91.0	115,857	5.8	64,484	3.2
1968	1,684,947	1,528,723	90.7	102,918	6.1	53,306	3.2
1967	1,492,296	1,422,729	95.3	39,037	2.6	30,530	2.0
1966	1,534,107	1,456,109	94.9	45,225	2.9	32,773	2.1
1965	1,433,448	1,374,206	95.9	27,360	1.9	31,882	2.2
1964	1,250,207	1,209,098	96.0	20,037	2.3	21,072	1.7
Local sales:							
1969	1,313,180	724,016	55.1	465,370	35.4	123,794	9.4
1968	1,246,082	695,744	55.8	419,021	33.6	131,317	10.5
1967	988,809	537,245	54.3	350,329	35.4	101,235	10.2
1966	913,601	491,001	53.7	361,736	39.6	60,864	6.7
1965	740,066	380,804	51.5	299,848	40.5	59,414	8.0
1964	673,191	333,311	49.5	252,000	37.4	87,880	13.1
Income:							
1969	1,201,576	1,193,459	[39] 95.7	53,286	[39] 4.3	(45,169)	
1968	1,155,498	1,080,577	93.5	60,859	5.3	14,062	1.2
1967	967,915	909,115	[39] 91.3	86,888	[39] 8.7	(28,088)	
1966	1,077,046	929,800	86.3	138,982	12.9	8,264	.8
1965	951,853	856,504	90.0	90,740	9.5	4,609	.5
1964	695,054	668,314	[39] 92.0	57,859	[39] 8.0	(31,119)	

[38] Broadcast Revenues, Form 324, Schedule 1, line 19; Network Sales, line 6; Spot Sales, line 8; Local Sales, line 9 (1964–68); 1969 figures based on Statements of Messrs. Simpson and McElveen.
[39] Percentage based on total Income of WIS–TV and WNOK–TV.

41. The parties applicant as well as the parties respondent/intervenor engaged and produced, as skilled or expert witnesses, persons with respected credentials in the field of broadcast economics and related fields. Preserving time-tested prudent skepticism respecting testimony at variance or in conflict of those who may give opinion evidence

in fields of accepted or acknowledged expertise,[40] each expert opinion will be accorded that quantum of weight as findings which reason compels as warranted.

42. The parties respondent/intervenors' expert economist used as a primary benchmark of television viewing in Columbia, South Carolina, the following: (Columbia Joint Exhibit No. 2).

NUMBER OF HOMES VIEWING IN PRIME TIME COLUMBIA, S.C.—NOVEMBER 1968

Station	Metro area	ADI area	Survey area	Viewing beyond metro area
WIS	19,370	33,200	45,500	26,130
WNOK	12,665	14,608	15,200	2,535
WOLO	10,430	11,952	12,400	1,970

He concluded that WIS–TV is currently the cohesive force which defines the Columbia market and that a large part of the disparity in audience among the three resulted from disparity in these physical facilities. This, as a fact, does not seem open to question. He further concluded that until recently the UHF stations WNOK and WOLO, had attracted very little audience outside the metro area; and that this situation would improve due to the increase in the number of UHF receivers in the nonmetro areas and because of the recent improvement in facilities undertaken by both WNOK–TV and WOLO–TV. In his opinion, the principal area in which the Columbia UHF stations stand to gain from the recent improvement in facilities is in the four Columbia ADI counties of Sumter, Orangeburg, Calhoun and Lee, and in Clarendon County, which is now in the Charleston ADI. In these five counties, the combined share of viewing hours of the UHF stations increased from 2.6% to 4.1%. This gain was at the expense of WIS–TV and any gains the UHF stations make in the future will be at the expense of WIS–TV, in addition to people who had not previously been active viewers. Also, he expressed the view that if WNOK–TV and WOLO–TV have no additional VHF competition in the gain area during the next two years, their audience will continue to grow and their share of viewing hours will increase (Tr. 226, 232–234, 258; Columbia Joint Ex. No. 2, pp. 3, 5–8, 11, 12).

43. The following table shows the share of viewing hours in these five counties during 1968–1969 by county and by call letters:

[In Percent]

County	Columbia, S.C.			Charleston, S.C.			Florence, S.C.
	WNOK	WOLO	WIS	WUSN	WCIV	WCSC	WBTW
Sumter	3.1	5.0	65.5	2.1	0.4	0.7	22.1
Orangeburg	1.0	0.2	40.1	8.6	7.2	18.7	0
Calhoun	3.6	2.4	64.5	4.4	1.2	11.1	0
Clarendon	0	0	42.0	9.5	10.2	32.9	5.4
Lee	1.2	0.6	55.7	0	0	0	42.3

[40] See Chamberlayne Trial Evidence 2d Edition (Tompkins) 1936, pp. 944–946: Also Wigmore on Evidence 3rd Edition (1940), p. 578, Sec. 1908.

From this table, he pointed out that the Charleston television stations, without the increased coverage they now propose had made what he termed "significant penetration" into Orangeburg, Calhoun and Clarendon Counties. He indicated that he considered a 10% share of viewing hours significant. It is his thesis that if the Charleston television stations are permitted to improve their facilities as proposed, their increased coverage of the five counties will serve to keep Clarendon County in the Charleston ADI and to cause the other four counties to shift from the Columbia ADI to the Charleston ADI (Tr. 253–255; Columbia Joint Ex. No. 2, Table 7).

44. This in the expert's view would have a twofold adverse impact on WNOK–TV and WOLO–TV. First, the loss of the counties from Columbia's ADI would bring about a drop in national rank from 109 to 145. He asserts that national and regional spot advertisers "buy" the market's rank before they "buy" the station. He divided the national and regional spot sales for the Columbia market ($1.6 million) by the number of TV homes in the ADI to come up with a spot market value of $12.69 per TV home. He multiplied the number of TV homes in the five county area by this latter figure to come up with an estimated loss of national and regional spot revenue on the order of $600,000, as a result of the anticipated loss in national rank. In this connection, he noted that the difference in spot revenue between Columbia and the 145th market (Bakersfield, California) is $1,038,000. He admitted that the switch of the counties from the Columbia ADI to the Charleston ADI was only an assumption on his part and that if the assumption were shown to be invalid then the conclusions which were drawn from it were likewise invalid. He also admitted on cross-examination that the 65th market had spot revenues only $200,000 greater than Columbia (109th) and that Madison, Wisconsin, the 113th market, also had spot revenue almost $200,000 greater than Columbia. He conceded that in 1967, WIS–TV had 95% of the national spot revenue in the Columbia market and 90% in 1968. He also conceded that so long as WIS–TV maintained a 50% or better share of the viewing audience in a county, the county ADI would not shift. Despite his emphasis on the paramount importance national and regional spot advertisers place on national ADI rank, he admitted that there are other variables which prompt an advertiser to "buy" a market, e.g. markets where he has sales facilities (Tr. 263, 267–68, 270, 273–75, 281, 291, 351–52; Columbia Joint Ex. No. 2, pp. 15–16).

45. The second, and in the witness's opinion more important, adverse impact on WNOK–TV and WOLO–TV which he foresees is the loss of "potential gain" which would result in the increased signal penetration by the Charleston stations into the five counties. To estimate the amount of this loss of "potential gain," he used the following computation to arrive at a value per viewing home for WNOK–TV and WOLO–TV:

	WOLO	WNOK
Total revenue*	$286,000.00	$589,000.00
Quarter hour viewing**	12,400.00	15,200.00
Rev/OHV home	23.06	38.75

*FCC, 1968.
**Average prime time quarter hour. ARB November 1968.

He then made the following computation to arrive at his estimate of the "potential gain" in the five counties for WNOK–TV and WOLO–TV:

ESTIMATE OF VIEWING AUDIENCE AND REVENUE ACCRUING TO WOLO AND WNOK IN THE 5 COUNTIES

	WNOK	WOLO
(1) Total TV homes	46,600	46,600
(2) UHF penetration (percent)	.77	.77
(3) UHF homes	35,882	35,882
(4) Distraction (from Charleston station)	.12	.05
(5) Net UHF homes	31,576	34,088
(6) Metro rating	.17	.12
(7) Quarter hour viewing	5,368	4,090
(8) Value per home	$38.75	$23.06
(9) Revenue	$208,010	$94,315

(1) ARB Market Report, November 1969.
(2) Ibid.
(4) Weighted average based on data in Tables 5 and 7.
(6) ARB Market Report, November 1969.
(8) Based on revenue and average quarter hour viewing in prime time, November 1968.
(Columbia Joint Ex. No. 2, pp. 17–19).

46. UHF set penetration in the five counties should increase in due course to the 96% penetration in the metro area. The switch of the five counties to the Charleston ADI would not mean the loss of all revenue from these counties to WNOK–TV and WOLO–TV. Each would still have some audience in the counties. It would not lower their network rates, but would prevent an increase. The "expert" believes that the Columbia and Charleston stations would split the predicted potential income for WNOK–TV and WOLO–TV in the five counties down the middle (Tr. 358, 359, 361, 362, 364, 365).

47. He conceded that Columbia built into it certain factors that will make it more prosperous than any other market in that particular region. Comparing it with Charleston, he stated that it was not a case of Columbia doing so well as it was a case of Charleston not doing as well. For example, Columbia has $10,133 per household spendable income as against $7,248 for Charleston. He agreed that if you are an advertiser you will pay to reach the homes with the higher spendable income. Again, Columbia had $322 million in consumer's spending income as against $192 million for Charleston in 1968, with retail sales of $273,510,000 as against $175,600,000 (Tr. 353–56).

48. The witness does not conclude that a grant of the Charleston applications would reduce WNOK–TV or WOLO–TV to profitless or

submarginal operations. Rather, he speaks in terms of a grant of the Charleston application "wasting" the approximately half-million dollars each has recently invested in improved facilities to expand and improve their coverage in the counties beyond the metro area. He concludes that each would remain "marginal" operations serving only the metro area.[41] He still adheres, however, to the opinion expressed in his report to the Commission on CATV that UHF cannot be encouraged by thwarting competition wherever it threatens to appear (Tr. 203; Columbia Joint Ex. No. 2, pp. 7, 21, 23).

49. Further the witness is of the view that the Florence, S.C. market has potential to support a profitable UHF station. He bases his view on the fact that Rovan of Florence, Inc. had filed for and had been granted a construction permit for Channel 15, despite the fact that the Commission cancelled the construction permit because of failure to construct. He opined that to the extent that the UHF stations in Columbia are successful, Florence would be ripe for the entry of UHF. He pointed to the existing hole in ABC coverage in the Florence area as encouraging to UHF entry. However, he indicated that a grant of the Charleston tall-tower proposals would cut in half the ABC "white area" and provide Florence itself with a Grade B VHF ABC signal. In his view, this would fatally injure the potential for UHF in Florence (Tr. 206, 1299, 1300; Columbia Joint Ex. No. 10, pp. 14–16).

50. Up to this point the opinion of the Respondent/Intervenor's expert is entitled to guarded endorsement as a qualified finding subject, of course, to the further test of qualification, modification or rejection when weighed, among other matters of record, against his brother opponent expert whose expertise covered the same general areas respecting the overall "impact" of a grant of the application on authorized and prospective UHF television broadcast stations in the area of concern.

51. In 1967 when WNOK–TV applied for authority to utilize a new transmitter in order to increase its power from 244 kw effective radiated power to one megawatt power, WNOK–TV did not at the same time apply to increase its antenna height. WNOK–TV could go to a maximum of 2,000 feet with power of 5 million watts. However, WNOK–TV could not afford to do so and was aware at the time of the plans of the Charleston television stations to propose a joint tall-tower (Tr. 402, 411; Palmetto Ex. No. 1, p. 4).

52. To justify WNOK–TV's need for increased revenues, the record indicates that in 1968 and 1969 Palmetto's profit levels, after taxes, were roughly equivalent to a 4% return on the depreciated value of tangible property and to 5 to 7% of gross receipts (less commission). These profit levels were too low; WNOK–TV must be able to give its stockholders a higher rate of return on their investment. A 10–12% annual return on investment represented the proper profit margin (Tr. 408–409, 1329–30; Palmetto Ex. No. 1, pp. 5–6).

[41] However, see paragraph 42 above where he said that their audience in these counties will increase and their share of viewing hours will increase if they have no additional competition for the next two years.

53. A further reason in support of WNOK–TV's need for increased revenue is the need for additional improvements in its facilities and to improve its local program service. WNOK–TV as presently constituted is equipped to feed news from Columbia, the State capital, to all parts of its service area and to originate news pickups throughout its entire service area. It broadcasts a substantial amount of public affairs programs, including several locally originated public affairs programs focusing on problems peculiar to the Midland South Carolina Area, state legislative problems and problems peculiar to metropolitan Columbia (Palmetto Ex. No. 1, pp. 7–8).

54. In an effort to increase its audience in the non-metro Columbia ADI counties, WNOK–TV has been undertaking promotional efforts to educate the public in these counties that they can now receive WNOK–TV, and what they must do to receive the signals. One of the most important factors in this effort is that for the first time it will be possible for the homeowner to receive signals from affiliates of all three networks without reorienting his antenna. Until now it was possible to receive all three networks only by orienting the antenna toward Columbia to receive WIS–TV (NBC) and toward Augusta or Florence for the other networks. Antenna rotors cost approximately $40–$60 and relatively few families in these counties have them (Palmetto Ex. No. 1, pp. 11, 13).

55. The 1969 Rand McNally Commercial Trading Atlas, a publication of wide acceptance in commercial circles, indicates that the Columbia Trading Area consists of the following counties: Richland, Lexington, Orangeburg, Kershaw, Calhoun, Fairfield, Bamberg, Barnwell, Allendale, Hampton, and Saluda Counties. Sumter is large enough to be recognized as a trading area of its own (Sumter, Lee and Clarendon Counties) but in fact Sumter is closely tied to Columbia (Palmetto Ex. No. 1, p. 16).

56. The 1969–70 Newspaper Circulation Analysis, published by Standard Rate and Data Service in August 1969, shows the following circulation figures (a blank indicates circulation of less than 5 per cent of the county homes):

County	Columbia newspaper circulation	Charleston newspaper circulation
Sumter	4,342	
Orangeburg	3,946	1,501
Kershaw	5,395	
Fairfield	2,648	
Lee	1,162	
Calhoun	733	
Clarendon (formerly Columbia ADI)	1,290	1,199

(Palmetto Ex. No. 1, p. 16)

57. When residents of Orangeburg, Sumter and the other smaller communities go to a larger city for shopping they tend to go to Columbia and advertisers in Columbia wish to encourage and develop that trend through advertising (Palmetto Ex. No. 1, p. 16).

58. The counties of Sumter, Orangeburg, Lee and Calhoun are not only physically closer to Columbia but also much closer economically to Columbia. Not only is this evident from the newspaper and radio preferences, and trading area data, that these counties are also oriented both culturally and politically far more to Columbia, the State capital, than to Charleston (Tr. 426–28; Palmetto Ex. No. 1, pp. 21–22).

59. The short-run effect of the switch of one or more of the Columbia ADI counties to the Charleston ADI would be the reduction of advertising dollars coming into Columbia from advertising such as soft drink companies, who have bottlers in both markets. In the long run, the companies would reallocate the county and the bottler to the Charleston market, or at least divide the advertising dollars between the two markets. When Clarendon County switched in 1969 from the Columbia ADI to the Charleston ADI, WNOK–TV lost some Coca-Cola revenue, but whether this was caused by the switch or whether there were other factors involved is not known. However, in 1969 WNOK–TV's local, national spot and network revenues all went up (Tr. 1352, 1391; Palmetto Ex. No. 2, pp. 5–6).

60. Among the various broadcast advertising techniques or criteria in recent years ADI has become a major marketing tool in national spot advertising. It is only a tool and is not used by advertisers to the exclusion of all other factors. Other factors, among many, which are considered are where the advertiser's product was distributed, whether the counties are rural or urban, etc. (Tr. 1427; Columbia Joint Ex. No. 11, pp. 1, 2, 5, 9).

61. The Columbia ADI has been dominated by WIS–TV until now, with WNOK–TV getting a very small share of the audience. It is here that WNOK–TV can be foreseen to have an opportunity to increase its share of the audience because of the attractiveness of CBS programming. In this connection, when WNOK–TV carried non-CBS programming in the afternoon it produced no national spot dollars. It may be anticipated that WNOK–TV's gain in national spot revenue will result from it increasing its share of existing advertising budgets, rather than by being able to develop additional dollars for the market. If the Charleston VHF stations brought substantially improved service into some of these counties, viewers would prefer the VHF signal over the UHF signal. This would reduce the potential of the UHF stations increasing their audience in these counties and could result in the counties shifting to the Charleston ADI. This could result in a reduction of total advertising dollars coming into the Columbia market on the order of 20–25% (Tr. 1416, 1431; Columbia Joint Ex. No. 11, pp. 10–14).

62. On the other hand, the great majority of advertisers are interested in circulation beyond a market's ADI. The fact that a market goes up or down in ADI ranking does not indicate whether the market's revenue is going up or down, that there are many other factors which enter into whether its revenue increases or declines (Tr. 1405, 1412–13).

63. In 1967, WOLO–TV added a new antenna, feed line and traplexer to eliminate technical deficiencies that were reducing its service

potential within the metro itself. A color film chain was added in 1967 to permit the station to broadcast color film for the first time. In the following year an additional video tape machine was added. But the major improvements came in 1969. Local live color and color video tape equipment were added, and the station's new high power transmitter was put on line in November. The modernization program has provided the station with the technical ability to provide Grade B or better service throughout most of the ADI. In addition, the station improved its studio and transmitter facilities in 1969 by moving out of the Nisson Hut in which it had started business into a new studio-transmitter building with modern facilities. WOLO–TV did not seek an increase in tower height. It decided to see what increased power would accomplish (Tr. 121; Columbia TV Ex. No. 1, p. 5).

64. In addition, WOLO–TV in 1969 expanded the amount and the quality of its local programming service, including the addition of two 25 minute locally produced news programs each day, Monday through Friday, and two 5 minute Community Bulletin Board programs scheduled immediately prior to the news program (Columbia TV Ex. No. 1, pp. 7–10).

65. WOLO–TV is seeking to upgrade its programming for the morning and late afternoon periods. Toward this end it has recently acquired the rights to two syndicated programs and a new film package (Columbia TV Ex. No. 1, pp. 10–11).

66. WOLO–TV expects its operating costs to increase from $308,000 in 1969 to approximately $387,500 [42] (including "a reasonable profit on invested capital"). WOLO–TV is one of C. N. Bahakel's stations. An 8½–10% annual return on investment to WOLO–TV would contribute to its viability and to achieve that ratio it would cut expenses, including serious cutbacks in staff. Additionally, the station will have to earn another $152,000 to cover installment debt and interest. This would mean almost doubling WOLO–TV's 1969 revenues. Based upon its 1968 experience, WOLO–TV earned $23.06 annually from each TV home in its average prime time quarter hour audience. Thus, to achieve revenue sufficient to meet the level of expenses described, it would have to achieve an audience of 23,500 on an average prime time quarter hour basis; the November 1969 ARB figures showed WOLO–TV with 13,000 homes compared to 17,000 for WNOK–TV and 50,000 for WIS–TV. In 1970 WOLO–TV, it was projected, can increase the number of homes from 13,000 to at least 14,500, with a possibility of beating out WNOK–TV. The bulk of the homes diverted would be from WIS–TV (Tr. 147, 152–55, 172–74; Columbia TV Ex. No. 1, p. 12).

67. WOLO–TV could not in the near future increase substantially its yield per home from its average prime time quarter hour viewing audience and hence would have to emphasize increasing its total audience. One could not expect to achieve more than 12,500 homes in the metro area (WOLO–TV's November 1969 metro area homes totaled 9,634). Therefore, it seems reasonable to suggest that it would still need 11,000 homes [43] from the other counties in its service area. In Novem-

[42] A "guesstimate" rather than a hard estimate (Tr. 191).
[43] The witness thought this was an optimistic assumption for 1970 (Tr. 342).

109–026—73——7

ber 1968 WOLO–TV had only 2,000 prime time quarter hour homes outside the metro area. The bulk of WOLO–TV's growth potential is located in the Columbia ADI counties of Sumter, Orangeburg, Lee and Calhoun, plus Clarendon County. These account for the bulk of TV homes outside the metro area which WOLO–TV can expect to serve for the first time with its new facilities. All told, there were 46,000 TV homes in this five county group in November 1968, of which 27,140 were UHF TV homes (Tr. 163; Columbia TV Ex. No. 1).

68. Though expressed by a lay witness, indeed an employee of WOLO's parent enterprise, as a tentative finding, loss of these counties would mean loss of "well-over half of all our out-of-metro ADI audience potential," that such a loss was "inevitable if we are faced with a VHF competitor in Charleston offering a satisfactory signal to these counties, the same network service, plus equal or better non-network product," and that, accordingly, "grant of the Charleston Tall-tower proposal would stunt our growth and prevent the station from achieving either its service goals or its legitimate economic aspirations" (Columbia TV Ex. No. 1, p. 9).

69. This witness resides in Charlotte, North Carolina, where he serves as station manager of WCCB–TV, Channel 18, Charlotte, North Carolina, another Bahakel station. His only connection with respect to WOLO–TV arises out of the fact that Charlotte is Bahakel's test point for programming and the personnel at the Charlotte station make programming recommendations to the other Bahakel stations (Tr. 175; Columbia TV Ex. No. 1, p. 1).

70. The President, General Manager and principal stockholder of WCSC, Inc., licensee of WCSC–TV, disputed the thesis of five critical counties and singled out the so-called critical counties which might shift to the Charleston ADI. That Orangeburg was part of the Columbia trading area and oriented more toward Columbia than towards Charleston (see paragraph —, above). That the principal population in Orangeburg County was in the City of Orangeburg, which is more closely oriented towards Columbia than the south and west sections of the county. The City of Orangeburg is substantially closer to the Columbia UHF sites (39 miles) and to the WIS–TV site (44 miles) than it is to the proposed Charleston joint site (76 miles). It is in the less populated southwest section of the county where the Charleston stations hope to make their gains in audience (Tr. 783; Appl. Ex. No. 4, pp. 21–22).

71. Even if the Charleston applications are ultimately granted, operation from the Charleston Tall-tower could not possibly commence before September 1972. This time-table prediction on procedural dates is based on the WSFA–TV UHF impact hearing (Docket 16894).[44] With this time-table, whatever gains in revenue are in fact realizable by the Columbia UHF stations as a result of their providing improved coverage to the five so called "critical" counties should be realized by the time the Charleston stations commenced operation from the joint tower. Any estimate as to how much of the increased revenues gain by this time would thereafter be lost as a result of operation from the Charleston joint tall-tower would be a pure guess. This was conceded by the Respondent's expert (Tr. 361–62; Appl. Ex. No. 4, p. 25).

[44] *Cosmos Broadcasting Corp.*, 21 FCC 2d 729.

72. According to the state message of Governor McNair, there were seven hundred and six million dollars in new, expanded industry, creating some additional 20,000 jobs in 1969. South Carolina's economy is seen as an expanding one, with nothing to prevent the rate of growth for the next ten years from equalling the rate for the past ten years (Appl. Ex. No. 4, pp. 30–31).

73. A group Research Manager of Edward Petry & Company, was retained by the Charleston applicants as a sponsoring witness in the nature of one entitled to more than ordinary lay weight to analyze the economic effects of their operating from the proposed joint tall-tower. The Petry Company is national sales representative for television and radio stations, including WUSN–TV. During the past eleven years he has been particularly concerned with the business ramifications of national spot advertising (Appl. Ex. No. 3, pp. 1–2).

74. He opined, although ARB's [45] ADI concept has tended to minimize the Total Survey Area (TSA) differences among markets, ARB still reports each station's audience in the total area. A comparison of TV homes in the Charleston and Columbia markets shows the following:

	TV homes metro area	TV homes survey area	TV homes outside metro	Percent TV homes outside metro
Charleston	85,600	325,000	239,400	74
Columbia	78,200	618,200	540,000	87

Thus, WIS–TV has the ability to deliver twice as much audience alone as any one of the Charleston stations. Accordingly, if he were buying the area of the United States that included South Carolina, he would automatically put WIS–TV on his list, without regard to ADI ranking or anything else (Tr. 901, 907; Appl. Ex. No. 3, p. 13).

75. According to Nugent, ADI rank is but one of many variables advertisers consider in market selection. Other measures which contribute to the attractiveness of "buying" Columbia are shown in the following table:

	Charleston	Columbia
Total survey area (1)	325,000 TV homes	618,200 TV homes.
Net weekly circulation (Dominant Station) (2).	154,000 (WCSC–TV)	230,000 (WIS–TV).
Net weekly circulation rank (1968) (3)	121	88.
Number of commercial stations (4)	3 VHF	1 VHF; 2 UHF.
Dominant station prime time households (5)	34,900 (WCSC–TV)	52,200 (WIS–TV).
Dominant station prime time households-rank (6).	127 (WCSC–TV)	81 (WIS–TV).
Dominant station share of total homes, prime time (7).	45 percent (WCSC–TV)	61 percent (WIS–TV).
Dominant station share of total homes, 9 a.m.—midnight (8).	48 percent (WCSC–TV)	70 percent (WIS–TV).

(Source: See appropriate notation under footnote [46])

[46] Source material for Table 9: (1) ARB, November 1969; (2) ARB, November 1969; (3) TMA, 1968; (4) SRDS, February 1970; (5) TMA, 1969; (6) TMA, 1969; (7) ARB, November 1969; and (8) ARB, November 1969.
(Appl. Ex. No. 3, p. 14)

[45] American Research Bureau (ARB) is an audience management and similarly oriented enterprise used widely in the broadcast business.

76. In terms of retail sales, Columbia had $5,754 per TV home as opposed to $4,732 for Charleston and $8,908 in consumer income per TV household as opposed to $7,877 for Charleston (Tr. 893).

77. In his opinion, only national spot revenues would be affected by a recomposition of the Columbia ADI. Based on data reported to the FCC for 1968, national spots accounted for approximately 17% of total revenues of the two Columbia UHF stations and local advertising contributed 60%.[47] This relationship is not abnormal for UHF stations, particularly in markets beyond the Top 100, and is not likely to change drastically in favor of national spot. While national spot has been increasing its contribution for these stations, local revenues have also grown in both share and dollar volume. This latter source of broadcast revenues has increased since 1965 from 58% to its present 60% level and by a dollar amount of about $200,000. Nationally, and especially among the smaller markets, the ratio of national to local dollars is changing. The major national accounts, while not necessarily budgeting fewer total dollars, are allocating more of their expenditures to the larger markets and less to the smaller ones. Increasingly, the cut-off-points of "Top 100" or "Top 50" are being narrowed. At the same time there has been a definite and increasing use of TV by local advertisers. These advertisers should continue to grow in importance both as a means of taking up any slack left by the departure of national accounts as well as providing new sources of revenue. The addition of essentially locally-oriented UHF stations in markets across the nation should accelerate this pace. In witness' opinion, it is quite likely that national spot will increase slightly the proportion that it contributes to the total of the Columbia UHF stations' revenues from the current 17% level. However, there are realistic limits. National spot for markets of the size of Columbia accounts for 38% of total billing. Pursuant to the changing character of TV advertising for markets below the Top 100, this figure is likely to decline. Since in the opinion of the applicants' national spot specialist, WIS–TV will continue to corner the bulk of national advertising, the 38% figure represents an absolute, if obtainable, ceiling for the Columbia UHF stations. Thus, in his views, local revenues will continue to be, for WNOK–TV and WOLO–TV, the principal source of income and the key factor in the success of their operations. However, based upon 11 years' experience in the field, he concluded that whatever happens from Charleston which might conceivably affect Columbia's ADI makeup will not have any effect upon the local revenues of the UHF stations. Exceptions notwithstanding, local advertisers do not predicate advertising decisions upon ADI delineations or rankings, he argued. A great many local advertisers do not consider audience measures of any kind, preferring to make their decisions according to program content, costs and other considerations, including personal ones. No better evidence of the difference in importance ascribed to audience measurements by national and local advertisers can be found than the Columbia UHF stations' own fi-

[47] These figures are based on financial information taken from the FCC Form 324 Reports for the Columbia stations. A compilation of this financial information is set forth on page 29, above.

nancial reports for 1968. These two stations combined earned three and one-half times more income from local advertising than from national accounts. Their share of the market's local advertising dollars was 44%, compared to less than a 10% share of the national figure (Tr. 912, 972, 974, 975; Appl. Ex. No. 3, pp. 16–18, 42).

78. The Columbia ADI market currently is composed of eight counties, two of which are Metro counties. It was created by and is a reflection of only one station—WIS–TV. Not only was this the case in prior years, but it is true today at a time when the two UHF stations are delivering their largest audiences in history. The following table shows that these eight counties would still be part of the Columbia ADI, even if there were no UHF stations on the air in the market.

Share of viewing hours—Columbia ADI ARB, 1969

County and stations:	*Share (percent)*
Richland (Metro):	
WIS–TV	53.1
WNOK–TV	26.8
WOLO–TV	18.6
Augusta [48]	.8
Lexington (Metro):	
WIS–TV	55.4
WNOK–TV	18.8
WOLO–TV	14.1
Augusta	11.0
Kershaw:	
WIS–TV	59.2
WNOK–TV	14.8
WOLO–TV	15.8
Florence	6.1
Fairfield:	
WIS–TV	52.8
WNOK–TV	9.6
WOLO–TV	4.6
Charlotte	19.8

County and stations—Continued	*Share (percent)*
Lee:	
WIS–TV	65.5
WNOK–TV	3.1
WOLO–TV	5.0
Florence	22.1
Sumter:	
WIS–TV	65.5
WNOK–TV	3.1
WOLO–TV	5.0
Florence	22.1
Orangeburg:	
WIS–TV	40.1
WNOK–TV	1.0
WOLO–TV	.2
Charleston	34.5
Calhoun:	
WIS–TV	64.5
WNOK–TV	3.6
WOLO–TV	2.4
Charleston	16.8

[48] Only that market accounting for the next largest share of viewing is included for each of the counties herein listed.

Source: ARB Coverage Study, 1969 South Carolina County Report.

(Appl. Ex. 3, pp. 20–22).

79. It is the opinion of the applicant's national spot specialist that since WIS–TV is the binding force that created and maintained the Columbia market, any realignment of the Columbia ADI would have to come at the expense of WIS–TV. Even the Respondent's expert conceded that the UHF stations have no effective presence in the so-called critical counties. Thus, although economic impact might result from a shift, it would be an impact on WIS–TV, not on WNOK–TV or WOLO–TV, the witness further concluded (Tr. 236; Appl. Ex. No. 3, p. 23).

80. Nor did he believe the audience in these five counties to be a consideration paramount over all others in the determination of either the future of Columbia's national spot or the viability of the Columbia UHF stations. However, to the extent that some potential audience lies in every county, he has examined the likelihood of these specific counties shifting to the Charleston ADI as a result of a grant of the Charleston maximum service tower. His analysis is set forth in Appendix IV.

81. To summarize his argument, what a buyer sees today is a market where WIS–TV has by far the largest share and, as the figures indicate, the buyer puts 90% of his money on that station. The Charleston proposed tall tower will reduce WIS–TV's dominance in the Columbia market. This will reduce its share of that market vis-a-vis WNOK–TV and WOLO–TV, making them more attractive to advertisers who will be disposed to give the UHF stations a greater share of their advertising dollar (Tr. 964–67).

82. The Charleston applicants also retained a consultant in the field of broadcast economics and broadcast station management operation to prepare an analysis of the economic impact of the Charleston proposed tall-tower on UHF stations (Appl. Ex. No. 14, pp. 1–3).

83. His contribution by way of expert analysis coincides with the applicants' specialist in national spot advertising, namely, that the economic viability of WNOK–TV and WOLO–TV will be determined almost exclusively by their ability to intrude upon the present dominant position of WIS–TV in the Columbia market. In his opinion, a grant of the Charleston application will have only a secondary or minimal impact upon the economic future of WNOK–TV and WOLO–TV. National advertising would have relatively small interest in WNOK–TV and WOLO–TV as TV media for the Columbia market because WIS–TV is so dominant at the present (Tr. 608; Appl. Ex. No. 14, p. 8).

84. He disputes the respondents' expert's prediction of loss of revenue based upon "revenue per home in the ADI market" multiplied by the number of TV homes in the counties which by the prediction would shift from the Columbia ADI to the Charleston ADI. That, in the final analysis, advertisers "buy" viewers and on a cost per thousand basis advertisers are primarily concerned with circulation which, in television, is measured by the total number of viewers. That Measured Total TV Home Circulation is the most significant revenue factor for all TV stations, regardless of the ADI TV Home County of its respective market. He does not know of a single television station that did not have circulation of considerable magnitude beyond its ADI (Tr. 650, 651; Appl. Ex. 14, pp. 9, 11, 13). The overall detail of his opinion of Respondents' expert's predictions is set out in Appendix V.

85. On the possibility of Orangeburg County being shifted from the Columbia ADI his views parallel those expressed by a principal of one of the Charleston applicants (Tr. 625, 626, 671; Appl. Ex. 14, pp. 17–18).

86. Beyond the foregoing, the following considerations had a bearing on the UHF impact issue, the applicants' expert opined. From 1963 to 1968, Columbia TV market total revenues rose by 54.5%. As

of 1968, local TV advertising produced $1,246,082 in income for the three Columbia stations, or 37% of total net broadcast revenues from all sources. From 1963 to 1968, local TV revenues rose by 64% in the Columbia market. This is compatible with national trends, which show that local TV advertising has been rising at a significantly faster rate than either network or national spot advertising. His view, it is untenable to argue that the Charleston TV stations (any or all) are likely to acquire local Columbia TV advertising, because of the distance from Charleston and the separateness of the markets. Additionally, in assuming the viability of WNOK–TV and WOLO–TV, growth in population and TV homes must be considered as well as the increase in all-channel receivers, which is expected to reach 95% by 1972. By 1972, which is the earliest the tall-tower proposal could be activated, the two UHF stations should make substantial advancement in audience development in all five "critical" counties and should by then be well entrenched within the viewing habits of the public in those counties. Both WNOK–TV and WOLO–TV have leeway both in terms of height and power to expand their total coverage area and to improve their signals within the expanded coverage area (Tr. 265, 661, 673–74; Appl. Ex. No. 14, pp. 19–21).

87. His opinion of the impact of the Charleston tall-tower proposal on UHF in markets other than Columbia is in a word, insignificant (Tr. 604–07, 1145–1146; Appl. Ex. No. 14, pp. 4–5).

THE EDUCATIONAL TELEVISION APPLICANT

88. One of the four applicants is South Carolina Educational Television Commission, the licensee of Educational Station WITV, operating on Channel 7, in Charleston, South Carolina. WITV holds a current authorization for 316 kilowatts ERP at 850 feet above average terrain (BMPET–663). The current authorization specifies the use of the tower of Station WCSC–TV, which is one of the three commercial VHF applicants in this proceeding. As a matter of fact, the three Charleston commercial stations have agreed to reimburse the Educational Television Commission up to a total of $75,000 for any expenses incurred in connection with completing the construction authorized at the WCSC–TV site, which are not recoverable in the event that the new facilities at the new site are authorized (App. Ex. No. 5, pp. 4–5).

89. The South Carolina Educational Television Commission has an extensive educational network throughout the State. This network consists both of closed-circuit operations covering over 250 secondary schools in South Carolina and also five educational television broadcast stations (including WITV), over which educational television programming is presented (App. Ex. No. 5, p. 1).

90. The principal television production center is located in Columbia and services both the closed-circuit system and the open-circuit network of the five television stations. Instructional materials are provided for the closed-circuit facilities to the secondary schools. The five broadcast television services meet some of the instructional needs of the elementary schools, and they also provide public cultural and informational television service during the evening hours. The closed-

circuit system serves mainly grades 9 through 12 and provides a maximum of six independent channels to these schools. A few of the programs broadcast over the television stations are also utilized in the secondary school system (Tr. 475–476).

91. The five television stations include WITV in Charleston, WJPM–TV on Channel 33 in Florence, WRLK–TV on Channel 35, Columbia, South Carolina, WEBA–TV in Barnwell on Channel 14, South Carolina, and WNTV on Channel 29 in Greenville, South Carolina. There also is a translator in Rock Hill, South Carolina, in the upper northern section of the State in York County (Tr. 480; App. Ex. No. 5; App. Ex. No. 20, Fig. 3B). The stations in Florence, Columbia, and Barnwell all provide a substantial amount of overlapping services among themselves; there is a small amount of overlapping service with the currently authorized facilities of WITV and a very substantial overlap of service areas with the WITV facilities proposed in the pending application (App. Ex. No. 22, Fig. 3B).

92. For the most part, all of the five stations broadcast simultaneously with the programming originating from the Columbia production center (Tr. 477–78). They provide, as indicated, educational programming basically for the elementary schools, of which there are 800 in the State (Tr. 478). From approximately sign-on time in the morning to 3 p.m., the programming is devoted to in-school course material for the grade schools. For an additional hour between 3 p.m. and 4 p.m., there is programming providing for "teacher in-service" continuing professional education training (Tr. 478–479). From approximately 4 p.m. to 7 p.m. the stations generally provide training programming, continuing professional education programming, and community-service programming. From 7 p.m. until sign-off at approximately 11 p.m., the stations provide general community service, public affairs, drama, music, and cultural programs, obtained from national educational sources and from the state's own local production center (Tr. 479).

93. In addition to the closed-circuit facilities and television stations owned by SCETV, the educational programming is also carried on a number of CATV systems within the State. Within the particular area here involved, there are five CATV systems located in the proposed Grade B contour of WITV, which in turn serve 12 schools in this area (App. Ex. No. 24, p. 1).

94. The SCETV Commission considered the prospect of operating from the tall-tower effort a most attractive opportunity for making more extensive availability of instructional and public television programs. As currently licensed with only 28.8 kilowatts ERP at 220 feet, the WITV coverage is quite limited, and there are large gaps in area between the present WITV contours and the contours of the nearby educational stations (App. Ex. No. 5, p. 3; App. Ex. No. 22, p. 2). However, since the original filing of the tall-tower application in February, 1968, SCETV has filed additional requests to improve its facilities and to move to the WCSC–TV tower, which applications have now been granted (BMPET–663 and BPET–358). The coverage has increased substantially under these new grants.

95. Examination of the contours authorized in the most recent grant, BMPET–663, shows that the presently authorized Grade B contours include almost *all* of the unserved areas between the licensed WITV Grade B contours (with low power and height) and the Grade B contours of the three neighboring stations which ring the WITV service area, WJPM–TV, WRLK–TV, and WEBA–TV (App. Ex. No. 22, Fig. 3B). In short, the hole in educational service has been filled in. The grant of the application now pending will not primarily serve new *unserved* areas, but rather will provide service to large areas already receiving service from the three existing stations, WJPM–TV, WRLK–TV, and WEBA–TV.

96. Evidence in the record establishes the number of persons and schools who will receive for the first time an off-the-air service from WITV. Under the currently authorized facilities, a Grade B service will be provided to 6,007 square miles and 398,728 persons (BMPET–663) (App. Ex. No. 22, p. 2). Under the proposal now pending here, a Grade B service will be provided to 9,374 square miles and 651,848 persons (BPET–323) (App. Ex. No. 22, p. 2). However, the vast majority of persons residing between the present and proposed contours are already receiving service from the three sister stations previously mentioned.

97. Accordingly, if BPET–323 were to be granted, an area of only 458 square miles would receive its first Grade B educational television service; and only 22,085 persons would receive a first educational service (App. Ex. No. 22, p. 2).

98. So far as the schools are concerned, the record shows the following: The total number of schools located within WITV's proposed Grade B contour, under BPET–323, is 386. Of this total, 228 are receiving or will receive the WITV service operating from the currently authorized facilities (BMPET–663). This leaves 158 schools in the gain area (App. Ex. No. 24, p. 4). Of the 158 schools in the gain area—that is to say, the area between the Grade B contour of WITV operating from the WCSC tower (BMPET–663) and the Grade B contour of WITV operating from the tall-tower (BPET–323)—143 are receiving service either from the closed-circuit facilities (47 schools) or from the three educational television stations which ring the WITV service area; namely, the Florence, Columbia, and Allendale stations (96 schools). Thus, of the total of 158 schools in the gain area, only 15 would be receiving a first educational television service facility (App. Ex. No. 24, p. 2; App. Ex. No. 28, pp. 1–2). Of these 15 schools, 4 schools are tied to a CATV system and hence are receiving the educational broadcasting service (App. Ex. No. 28, p. 1).

COMMUNITY SURVEY ISSUE

100. The Review Board added an issue to determine the efforts each of the three commercial stations had made to ascertain community needs and interests and the means by which each proposed to meet such needs and interests. The following paragraphs set out the pertinent evidence of record:

101. The Charleston applicants retained a Professor of Economics at the University of South Carolina, to prepare a demographic study

of the following South Carolina counties: Bamberg, Calhoun, Florence, Horry, Marion, Orangeburg and Sumter.[49] During the ten years he has resided in South Carolina, he had conducted studies of the labor force and other aspects of the South Carolina economy and has worked with a number of organizations concerned with the economic and social life of the state. His current areas of study include labor economics, managerial economics and industrial economics (App. Ex. No. 9, p. 1).

102. On December 31, 1969 the Professor submitted to each of the three commercial television stations a 73 page report to which were attached 37 tables detailing characteristics of the population in each of the seven counties. The data were largely quantitative, but the report also included other facts which provide understanding of the characteristics of the people in the seven counties and the environment within which they live. Social characteristics, such as age distribution of the population, marital status, educational attainment and racial distribution were included. In addition, the economic status of the people was described through data relating to industrial and occupational distribution of employment, labor force participation and income. References to the economic and social organizations of the area were included. Though meriting considerable weight to restrain the tendency of a decision of undue length, the gist of the Professor's report is set out in Appendix VI.

103. If granted authority to construct the tall tower, WCSC–TV proposes to do the following, among other things, to meet the problems and needs of the gain area:

I. Special Public Affairs Programs

(a) WCSC–TV currently produces twenty special affairs programs a year (30 and 60 minutes).[50] It proposes to increase this by a minimum of five if granted the tall tower, directing those five specifically to the most urgent needs of the gain counties. Its present ADI counties' needs coincide to some extent with the problems it has found in the gain area, so it estimates that at least half of the public affairs broadcasts would serve gain area needs. Examples of what it has in mind are 1) Point the way to better communication between races by a frank roundtable discussion between Negro and white leaders, including youth, concerning the main problems that exist between the races; 2) Bring to the attention of those who should know the facts and seldom encounter them the scope of adult under-education and the grim nature of pockets of poverty—pointing the way that something might be done about these matters; 3) A shock attack on street, roadside and personal property litter by showing pictorially what it all looks like throughout the area;

[49] The applicants' proposed gain areas cover portions of each of these counties.

[50] Some examples of recent special programs on WCSC–TV are (1) The story of a life of crime, murder and a life sentence, told by the criminal who also describes life in the penitentiary; warnings to local youth on same program by an ex-convict; (2) A demonstration of the slowed reaction of a person who has had "a couple of drinks" by means of testing reactions of several staff members before and during the course of several drinks "on air"; (3) An effort to let steam out of the boiler of local "long hair" high school students who were rebelling against school authorities by letting 11 present their views; (4) Film footage of many fatal traffic accidents and stories of the grimmest nature, told by the Highway Department, presented during December to forestall carelessness on the highways during the holidays.

4) Point up the ways that the individual adds to pollution by his personal habits in the home and in his daily activities—highlighting what can happen if it all continues; 5) Trace the careers of a Negro and a white young adult who left the area to find more opportunity but who have returned because there is a new day, a new opportunity. Present and talk with these people as well.

II. Spot Announcements

(b) WCSC–TV found in its survey of the gain counties that by far the most urgent needs exist among the more disadvantaged in education and work skills. The infrequency of public affairs and special programs limits its ability to deal effectively with these problems. Masses of people must be encouraged to change life-long habits, to assume new viewpoints, to resume or begin schooling, to remain in the area instead of leaving for other parts, to train and develop new skills, to work hard to upgrade jobs, to begin family planning, to handle more wisely limited resources, to stop littering, and so on. WCSC–TV proposes individual, locally-prepared, spot announcement campaigns scheduled on the scatter basis which, agencies have discovered, works so well. A substantial portion of the time of a veteran member of its staff, who already supervises public service activities, will be devoted to preparation of such announcement campaigns to meet the needs of the area we serve. WCSC–TV will be sensitive to gain county problems and interests when allocating time for public service broadcasts which have been produced outside the station. The person who allocates and schedules these prepared public service announcements and programs would be kept aware of the changing circumstances, so that needs could be met to the best of its ability.

III. Agricultural Programs and Information

(c) WCSC–TV believes that if its proposal is granted, it can persuade Clemson University Extension Service to go forward with a plan for Clemson to assign to the eastern Carolina counties a man who is an expert in both agriculture and broadcasting and who could work with Clemson's home economists. This person would also work with the county farm agents in the planning and preparation of television broadcasts. A program of this type would take a great burden of preparation off the county agents. The time, farm agents of WCSC–TV's area say, ideal for reaching the farm home is preceding its 7:00 a.m., CBS news, Monday through Friday, either 15 or 30 minutes, as needed by the Clemson Extension Service.

IV. Discussions and Talks

(d) When WCSC–TV commences the daily Monday through Friday farm and home economics broadcasts it will reassign the Saturday morning time of 7:00–7:30 a.m. now devoted to a farm and home program, for a weekly broadcast designed to meet the problems and needs of counties outside Charleston Metro. Its plan is to invite representa-

tives of various agencies and groups and endeavours to appear on this broadcast, selected on the basis of current problems and needs. For example, two Negro ministers whom it recently interviewed concerning private development of low income housing projects which they brought into being; the head of the eleven-county Boy Scout region in the Pee Dee (gain area) who says leadership among the disadvantaged and overadvantaged peoples is scarce; appropriate people from communities which have developed adequate Day Care Centers. WCSC–TV presently carries "*On Camera*" at 1:00–1:30 p.m., Monday through Friday, emceed for over ten years by a native of the gain area. WCSC–TV would encourage and take positive means of securing personalities from the gain counties to appear on "*On Camera.*" This program's audience consists of primarily women (although 25% surprisingly consists of men). This program will discuss problems such as the following: Family planning; management of resources; housing; recreation for youth; Day Care Centers; need for cleaning up; importance of tax increases in order to secure needed expansion of city services; and sensitive handling of the school integration system. Various problems can be met by the daily morning program, "*TV Party Line*," Monday through Friday at 8:00–9:00 a.m. This is a potpourri of homemaking, gardening, parents guidance of youth, features on our black citizens, news, weather and country music, plus interviews with people on many current topics. The program segment of substantial interest to Negro members of WCSC–TV's audience consists of 5 minute vignettes written, produced and broadcast by a retired Negro school teacher, Mrs. Sadie Oglesby, a part-time member of its staff. Recognition is given to Negroes who are pursuing successful careers and making worthwhile contributions to the community. A suitable share of these broadcasts will be devoted to black residents of the gain area in order to motivate others, encourage them to remain in school, upgrade their work skills and endeavour to excel. Another program which will be expanded to include the interests of the gain counties is "*The South Carolina Capitol Report.*" It highlights the sessions of the South Carolina State Legislature which are of particular interest to its counties. Senators and Representatives from its area are interviewed on this program.

V. Other

(e) Additionally, WCSC–TV proposes to continue its news coverage and its editorials. These will be tailored to meet the needs and interests of the gain area as well as WCSC–TV's present service area (Appl. Ex. No. 11, pp. 3–15).

104. When WUSN–TV evaluated the information obtained as a result of the surveys described above and as a result of prior surveys, it concluded that the significant needs and interests of the gain area are as follows:

(1) A need for more industry.
(2) A need for better recreational facilities.
(3) A need for more job opportunities, especially for minority groups.
(4) Improved public transportation facilities are desired.
(5) Additional low-rent and low-cost housing is a necessity.

(6) Race relations need improving.
(7) Road and traffic problems need improving.
(8) More skilled, trained laborers are needed.
(9) More farm laborers needed.
(10) Vocational and adult training and education needed. Information regarding those programs that are available now must be disseminated.
(11) Better hospital facilities needed.
(12) Drug and drug abuse problems (Appl. Ex. No. 12, p. 1).

105. WUSN proposes to meet the needs and problems set forth above primarily through its regularly scheduled Public Affairs programming. Additionally, problems and needs of the area will receive regular coverage on local news programs. News "stringers" also furnish additional information from outlying counties to be used on WUSN–TV news programs. Short announcements (not PSA's), regularly-scheduled throughout the broadcast day, will also highlight principal needs and problems of the area. WUSN–TV's regular Public Affairs programs include the following:

Eye-Witness Report for Women, telecast daily, Monday through Friday, from 11:30–12:00 Noon. Interviews and panel discussions are conducted daily (in addition to regular segments of news and weather) and, as such, furnish an excellent opportunity for the discussion of relevant, pertinent local problems and issues.

Eye-Witness Essay, is a regularly-scheduled, monthly, 60-minute program, produced in its entirety by the staff of WUSN–TV. This Public Affairs program, always broadcast in prime time, presents in-depth analyses and discussions of the major problems of local (and, occasionally, national and international) import. Pressing, widespread problems of the WUSN–TV coverage area will be examined and discussed on this program.

Jaycees in Action. A weekly 30-minute Public Affairs program produced by local Jaycees. The format is devoted to a discussion of pertinent issues and problems and will provide an additional means of presenting relevant problems of the local area. The program is telecast each Sunday afternoon at 1:30 p.m. (Appl. Ex. No. 12, pp. 1–3).

106. When WCIV evaluated the information obtained as a result of the surveys described above and as a result of prior surveys, it concluded that the significant needs and interests of the gain area are as follows:

(1) Job opportunities through industrial expansion, and relocation.
(2) Crop diversification—from tobacco, cotton, soybeans, to dairying—poultry, other livestock production.
(3) County and community planning needed to provide more adequate low-cost housing facilities.
(4) Establishment of hard-working, effective bi-racial committees to help solve civil rights, educational problems.
(5) Expansion of adult-education, technical training facilities to up-grade and qualify Negro work force for industrial job potential. Also need to develop means to motivate Negro and poor white enrollment.
(6) County-by-county re-evaluation of tax base—presumably increasing same to finance community improvements, services.
(7) There must be a socially and economically suitable method to set up and enforce equal employment practices.
(8) Improved military housing conditions are needed.
(9) Increased public recreation programs, facilities (Appl. Ex. No. 13, p. 1).

107. First Charleston Corporation proposes to telecast the following programs with respect to the ascertained significant needs and interests of the gain area: Specific programs and program series designed to supplement WCIV's present schedule—and which respond to the ten-county gain area survey—will be developed largely by the Department of News & Public Affairs. For example, all of WCIV's regularly scheduled news coverage has presently been expanded to include local events occurring in outlying communities, as a result of earlier surveys made in connection with its renewal application and the present application. This expanded news coverage will be further enlarged to cover the gain counties. Additional news personnel and equipment will be needed for this effort, and these requirements are currently under study. In addition, specific gain area problems relating to industrial expansion, job opportunities, taxation, and school integration and consolidation will be extensively treated on WCIV's regularly scheduled daily discussion/interview series, "Charleston Showcase." Guest interview lists for this series will be expanded to include civic, governmental, business, and racial leaders from the communities within the gain counties. To answer the need for communication concerning the severe agricultural problems prevalent in the gain counties, e.g., economic problems faced by small farmers such as loss of labor force to industry and the cost-price squeeze, special attention will be provided toward the preparation of a weekly half-hour agricultural series, to be scheduled at a convenient rural viewing time period. Produced by WCIV News in cooperation with Clemson University, this weekly half-hour series will deal with specific critical problems, such as: crop diversification; improved per-acre yields; the establishment of farm machinery pools (essential to the small farmer); farm labor scarcity; and other major problems besetting the South Carolina farmer today. Major emphasis will be directed in the area of civil rights, equal employment opportunities, and low-income adult education and technical training needs. In this regard, the station will utilize the assistance of civil rights leaders and State Technical Center administrators in producing documentary program "specials," aimed at improving race relations and employment practices within the present and contemplated Grade B coverage area (Tr. 1009, 1011; Appl. Ex. No. 13, pp. 2–3).

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS

1. This proceeding is designed to (a) explore the impact that an expansion in the facilities of WUSN–TV (Ch. 2), WCIV (Ch. 4), and WCSC–TV (Ch. 5), the three commercial VHF television stations in Charleston, South Carolina, would have on the ability of authorized and prospective UHF stations in the area to compete effectively and the effect of such competition on the continuance of operation by existing UHF stations; and to (b) determine the efforts made by the three stations to ascertain the community needs and interests of the area to be served and how such needs and interests would be met. With respect to the impact aspects of this proceeding, the greater

effect will be on authorized and prospective UHF stations in Florence and Columbia, South Carolina, and to a lesser degree on such stations in Wilmington, North Carolina, and Augusta and Savannah, Georgia.

A. Technical Considerations

2. Charleston is a city of 65,925 persons centrally located on South Carolina's east coast. Charleston is the seat of Charleston County (pop. 216,382) and the central city of the Charleston Urbanized Area (pop. 160,113) and the Charleston Standard Metropolitan Statistical Area (pop. 254,578), the latter consisting of Charleston and Berkeley Counties. Of the four television channels allocated to the city, WUSN–TV, WCIV, and WCSC–TV occupy three of the Channels and are affiliated with the ABC, NBC and CBS networks respectively. The fourth, Channel 7, is utilized by WITV, a noncommercial educational station.

Coverage—Charleston Stations

3. The four Charleston stations operate at individual sites located from one to seven miles east of the city; however, under the proposals herein the four stations will move to a common site about 20 miles northeast of Charleston and use a joint 2,000 foot tower to support the transmitting antennas. Specifically, the changes are as follows: WUSN–TV—from 100 kw/790 ft. to 100 kw/1860 ft.; WCIV—from 100 kw/940 ft. to 100 kw/1950 ft.; WCSC–TV—from 100 kw/1000 ft. to 100 kw/1950 ft., and WITV—from 28.8 kw/220 ft. to 240 kw(hor.), 316 kw(max)/1720 ft. In each instance, operation as proposed makes use of maximum allowable effective radiated power and near maximum permissible antenna height above average terrain.

4. Since the Charleston stations are located on the coast, approximately half of an otherwise circular area within the respective predicted Grade B contours falls in the Atlantic Ocean. The land areas encompassed by the present and proposed Grade B contours lie entirely in South Carolina. The proposed expansion of the Grade B coverage areas will not result in the loss of any existing Grade B service now provided by the Charleston stations. In substantial part the proposed gain areas are the recipients of from two to three Grade B services from stations in other cities—other portions receive at least five such services.[51] The Grade B contours of four ABC affiliated stations[52] overlap the Grade B contour of WUSN–TV, the ABC affiliate in Charleston, the greatest overlap being 14.8%; four CBS affiliated stations similarly overlap WCSC–TV, the CBS affiliate in Charleston, the greatest overlap being 17.3%; three NBC affiliated stations similarly overlap WCIV, the NBC affiliate in Charleston, the greatest overlap being 30.6%. The following table summarizes the statistical Grade B coverage data for the three commercial VHF stations in Charleston:

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[51] Unless otherwise noted, the term "service" as used herein means that the station provides at least predicted Grade B coverage.

[52] One of the four, Station WBTW in Florence, actually carries CBS programs but has an ABC contract also.

	Population			Area (sq. mil.)		
	WUSN-TV	WCIV	WCSC-TV	WUSN-TV	WCIV	WCSC-TV
Present	436,808	461,628	470,550	6,467	6,820	7,233
Proposed	781,033	803,902	803,902	10,600	11,233	11,233
Gain	344,135	342,274	333,352	4,133	4,413	4,000
First ABC	130,780			1,730		
First CBS			22,132			234
First NBC		3,046			140	

NOTE.—First 3—network service to 159,333 persons in 1,829 square miles.

5. In the case of WITV, the noncommercial educational VHF station in Charleston, the proposal will expand Grade B coverage from 398,728 persons in 6,007 square miles to 651,848 persons in 9,374 square miles for a gain of 253,120 persons and 3,367 square miles. The proposed expansion would provide a first noncommercial educational service to 22,085 persons in an area of 458 square miles.

Impact on UHF—Florence, South Carolina

6. Florence, a city of 24,722 persons and the seat of Florence County (pop. 84,438), has one VHF television station—WBTW, and a noncommercial educational UHF station—WJPM-TV. Two UHF channels (15 and 21) allocated to the city are presently unoccupied. Florence is situated about 95 miles north of Charleston and 72 miles east northeast of Columbia. Although not part of any urbanized area or standard metropolitan statistical area, the city is the hub of the Florence Area of Dominant Influence (ADI) which spans a six-county area.

7. The Grade B contour of the three Charleston commercial VHF stations presently fall at least 26.5 miles short and to the south of Florence and overlap no more than 5% of the Grade B service areas of prospective UHF stations on Channels 15 and 21 assuming operations similar to deleted WPDT, a UHF station formerly authorized in Florence. The proposed Grade B contours would extend 2.5 to 4 miles beyond and to the north of Florence providing Grade B service to the community and overlapping about 40% of the Grade B service areas of the prospective stations. The Grade B coverage areas of the assumed prospective UHF stations in Florence would lie entirely within the Grade B contour of WBTW (VHF); additionally, portions of such areas would be included within the Grade B contours of nine VHF stations and four UHF stations so that in the aggregate Grade B service would be available in any one part from two to eight stations. All of the prospective UHF service areas receive CBS network service from WBTW and in part from two other CBS affiliates. Three NBC and three ABC network affiliates also serve portions of the areas. Two of the VHF stations, WIS-TV in Columbia, South Carolina, and WECT in Wilmington, North Carolina, include Florence within their respective Grade B contours. WIS-TV and WECT are both NBC affiliates. The extension of the Grade B coverage areas of the three Charleston commercial VHF stations will provide Florence with three new network services including a first ABC network service from WUSN-TV.

8. Of the six counties comprising the Florence Area of Dominant Influence (ADI), three are penetrated for the first time by the Grade B contours of the three Charleston commercial VHF stations operating as proposed. The three counties are: Florence (pop. 84,438), Darlington (pop. 52,928), and Marion (pop. 32,014); their respective county seats are: Florence (pop. 24,722), Darlington (pop. 6,710), and Marion (pop. 7,174). WBTD in Florence and the two assumed prospective UHF stations provide a Grade B signal over all three counties and a principal city grade signal over their respective county seats. With respect to Florence County, VHF Station WIS–TV places a Grade B signal over 90% of the area including the county seat and VHF Station WECT encompasses 70% of the area including the county seat. Proposed WUSN–TV would serve about 95% of the area and population including the county seat. Similarly, proposed WCIV and WCSC will serve about 97% of the area and population including the county seat. All of Darlington County is within the Grade B contour of WIS–TV and the county seat is within the station's Grade A contour. WECT's Grade B contour encompasses over 40% of the area including the county seat. Proposed WUSN–TV will provide Grade B coverage to 7% of the area and 10% of the population but not the county seat; proposed WCIV and WCSC–TV will serve 10% of the area and 12.5% of the population but not the county seat. As to Marion County, WIS–TV provides Grade B coverage to over 20% of the area but does not include the county seat; WECT's Grade B contour includes the entire county and VHF Station WWAY–TV in Wilmington, North Carolina provides Grade B coverage to 40% of the area but not the county seat. Proposed WUSN–TV will include within its Grade B contour 70% of the area and 54.5% of the population including the county seat; proposed WCIV and WCSC–TV, 75% of the area and 72.4% of the population including the county seat.

Impact on UHF—Columbia, South Carolina

9. Columbia, a city of 97,433 persons, is the county seat of Richland County (pop. 200,102); the state capital, the central city of the Columbia Urbanized Area (pop. 162,601); and the central city of the Columbia Standard Metropolitan Statistical Area (pop. 260,828) comprised of Richland and Lexington counties. The city lies near the center of the state 102 miles northwest of Charleston and 72 miles west southwest of Florence. Television authorizations in Columbia include one commercial VHF station—WIS–TV (Ch. 10), two commercial UHF stations—WNOK–TV (Ch. 19) and WOLO–TV (Ch. 25), one educational UHF station—WRLK–TV (Ch. 35). UHF Channel 57 assigned to the community is presently unoccupied.

10. The Grade B contours of the three Charleston commercial VHF stations presently fall 36 to 38 miles short and to the southeast of Columbia and overlap 5 to 6% of the Grade B service areas of WNOK–TV and WOLO–TV. These two UHF stations in Columbia have substantially the same coverage areas and it is assumed that a prospective Channel 57 station would provide similar coverage. The Grade B contours of the three Charleston stations operating as proposed would fall 14.5 to 16 miles short and to the southeast of Columbia overlapping

109–026—73——8

22 to 24% of the Grade B service areas of Columbia's two UHF stations. Areas to the east, southeast, and south of Columbia would be located within the Grade B contours of the three Charleston stations for the first time.

11. WNOK–TV initially commenced operation in September of 1953. At that time Grade B coverage extended to 342,102 persons in 3,529 square miles. In June of 1961 Grade B coverage expanded to 474,978 persons in 4,817 square miles—a gain of 132,876 persons in 1,288 square miles. A further expansion in July of 1968, the present mode of operation, permitted WNOK–TV to include 635,223 persons in 8,137 square miles within its Grade B contour for an additional gain of 160,245 persons in 3,320 square miles. Similarly, when WOLO–TV began transmitting in September of 1961, the station provided Grade B coverage to 330,615 persons in 3,353 square miles. In August of 1964 the station's coverage was enlarged to include 444,176 persons in 4,706 square miles for a gain of 113,561 persons in 1,353 square miles. The present mode of WOLO–TV's operation dates back to November of 1969 at which time Grade B coverage increased to 630,596 persons in 7,890 square miles or a further gain of 186,420 persons in 3,184 square miles.

12. WIS–TV, Columbia's only VHF station, initiated operation in November of 1953—competing immediately with WNOK–TV and later with WOLO–TV when that station commenced operation in 1961. A change in the WIS–TV facilities in November 1964 increased Grade B coverage from 681,717 persons in 9,073 square miles to 1,190,369 persons in 16,428 square miles for a gain of 508,652 persons in 7,355 square miles. From the very beginning the Grade B contour of WIS–TV always completely enveloped the Grade B contours of WNOK–TV and WOLO–TV. WIS–TV's Grade B contour penetrates the counties of Colleton, Dorchester, and Berkeley in South Carolina which are adjacent to Charleston County and part of the Charleston ADI and reaches to within 30 miles of Charleston. The Grade B contour of this station includes 21.7% of the area of Charleston ADI, 46.3% of the Augusta ADI; 96.3% of the Charlotte ADI, 72.1% of the Florence ADI, 22.4% of the Greensville-Spartanburg-Asheville ADI, and all of the Columbia ADI.

13. As noted, WIS–TV's Grade B contour includes all the area within the Grade B contours of the present/prospective UHF stations in Columbia. Thirteen stations provide Grade B coverage to portions of these areas and together with WIS–TV make available from one to seven services therein. Apart from the service provided the city by the three local commercial stations, Columbia receives Grade B coverage from VHF stations, WJBF and WRDW–TV and UHF station WATU–TV, all in Augusta.

14. Three ABC affiliated stations[53] place their Grade B contours over portions of the Grade B coverage area of UHF station WOLO–TV, the ABC affiliate in Columbia. Proposed WUSN–TV would provide Grade B service to 22% of the area and 21% of the population

[53] WBTW in Florence also has an ABC affiliation contract, but actually carries CBS programs under its primary network agreement.

therein, an increase from its present service to 5% of the area and 1% of the population.

15. Five CBS affiliated stations provide Grade B coverage to portions of the Grade B service area of UHF Station WNOK–TV, the CBS affiliate in Columbia. Proposed WCSC–TV would provide Grade B service to 25% of the area and population, an increase from its present service to 6% of the area and 4% of the population.

16. Four NBC affiliated stations place their Grade B contours over portions of the Grade B service area of VHF Station WIS–TV, the NBC affiliate in Columbia. Proposed WCIV would provide Grade B service to 31% of the area and 28% of the population, an increase from its present service to 13% of the area and 8% of the population.

17. Columbia presently receives the programming of all three networks from its local stations, and, in addition, receives ABC programs of Grade B or better quality from VHF Station WJBF in Augusta and CBS programs of similar quality from VHF Station WRDW–TV in Augusta. The three Charleston stations do not provide network service to Columbia at the present time and would not under their respective proposals.

18. As WNOK–TV/WOLO–TV perceive it, maximum impact on their UHF operations from the expansion of the VHF facilities of the Charleston stations would occur in a five-county area in South Carolina where the Columbia UHF stations now provide Grade B coverage to all or part of the several counties. Four of the counties—Calhoun, Lee, Orangeburg, and Sumter—are part of the Columbia ADI; the fifth county—Clarendon—is in the Charleston ADI. The Columbia stations (WIS–TV, WNOK–TV, WOLO–TV) contend that, considering the quality of the signals now present in the various county seats from UHF stations WNOK–TV and WOLO–TV, there would be a tendency on the part of viewers to install more efficient receiving antennas oriented toward Columbia, and that should the Charleston stations be permitted to improve their transmitting facilities as proposed herein, the present advantage of the two UHF stations would be materially decreased.

19. Calhoun County (pop. 12,156); Seat—St. Matthews (pop. 2,433). WNOK–TV and WOLO–TV Grade B contours include all of Calhoun County and, respectively, provide St. Matthews the county seat, with principal city grade and Grade B signals. WIS–TV, the VHF station in Columbia, also serves the entire county and furnishes a principal city grade signal in St. Matthews. VHF stations WJBF and WRDW–TV in Augusta both obtain Grade B coverage of the county seat and 95% and 85%, respectively, of the county area. With respect to the Charleston VHF stations, service is and will be furnished this county as follows: WUSN–TV—5% to 68% (pop. nil to 81%); WCIV—8% to 75% (pop. 4% to 85%); WCSC–TV—10% to 75% (pop. 9% to 85%). Likewise, the Grade B contours of the three Charleston stations which now fall 11 to 14 miles short of St. Matthews will extend 7.5 to 9 miles beyond the city under the operations proposed herein.

20. *Lee County (pop. 21,832); Seat—Bishopville (pop. 3,586).* WNOK–TV and WOLO–TV both provide Grade B coverage to about 90% of Lee County (91% of population) and to Bishopville, the county seat. On the other hand, WIS–TV, Columbia's VHF station, and WBTW, the VHF station in Florence, both include the entire county with their respective Grade B contours and provide principal city grade coverage of the county seat. The Grade B contours of the Charleston stations do not penetrate the county; however, operating as proposed the following proportions of the county would be included by the Grade B contours of these stations: WUSN–TV 43% (pop. 33%); WCIV/WCSC–TV—50% (pop. 43%). The proposed Grade B contours of WUSN–TV, WCIV, and WCSC–TV fall short of the county seat by 3 to 4.5 miles.

21. *Orangeburg County (pop. 68,559); Seat—Orangeburg (pop. 13,852).* WNOK–TV and WOLO–TV both provide Grade B coverage to about 80% of Orangeburg County area and population and to Orangeburg, the county seat. WIS–TV serves all of the county and furnishes a principal city grade signal in the city of Orangeburg. VHF stations WJBF and WRDW–TV provide Grade B coverage to the county seat and to 80% and 75%, respectively, of the county area. In the case of the Charleston VHF stations the present and proposed county Grade B coverage follows: WUSN–TV 40% to 72% (pop. 32% to 85%); WCIV—45% to 75% (pop. 35% to 86%); WCSC–TV—45% to 75% (pop. 37% to 86%). While the present Grade B contours of these Charleston stations fall 6.5 to 8.5 miles short of the county seat, the proposed Grade B contours include the city and extend some 8 to 9.5 miles beyond. At present, receiving antennas in Orangeburg are generally directed toward the television stations in Augusta with only a few antennas oriented toward Charleston.

22. *Sumter County (pop. 74,941); Seat—Sumter (pop. 23,062).* WNOK–TV and WOLO–TV both provide Grade B coverage to the city of Sumter and to about 90% of the Sumter County area. Populationwise, the WNOK–TV and WOLO–TV coverage extends respectively, to 97% and 96% of the county population. WIS–TV provides Grade B coverage to all of the county and a principal city grade signal to the county seat. VHF station WBTW in Florence provides Grade B coverage to the county seat and to 90% of the county area. The present Grade B contours of the Charleston VHF stations do not reach as far as Sumter County; however, the proposed Grade B contours of these stations include the county seat and proportionately include the following county areas and populations: WUSN–TV—85% (pop. 89%); WCIV—90% (pop. 94%); WCSC–TV—90% (pop. 94%). Many receiving antennas in Sumter are directed toward Florence.

23. *Clarendon County (pop. 29,490); Seat—Manning (pop. 3,917).* WNOK–TV and WOLO–TV both provide Grade B coverage to Manning and include within such contour, respectively, 45% and 40% of the county area and 54% and 43% of the population therein. WIS–

TV provides Grade B coverage to the entire county and a principal city grade signal in Manning. VHF station WBTW in Florence provides Grade B coverage to the county seat and to 70% of the county area. The Charleston VHF stations furnish Grade B coverage to the county seat and to the county as follows: WUSN–TV—48% (pop. 41.5%); WCIV—65% (pop. 68.1%); WCSC–TV—65% (pop. 74.2%). Operating as proposed, the Grade B contours of each of the three stations will encompass all of the county.

24. When WNOK–TV commenced operation in September of 1953, its Grade B contour was overlapped only by the Grade B contour of WBTV, a VHF station in Charlotte, North Carolina. The overlap included 19,961 persons in 524 square miles or 5% of the population and 15% of the area within WNOK–TV's Grade B contour. Thus, WNOK–TV provided the only Grade B coverage to 322,141 persons (95%). Two months later WIS–TV began operation on VHF Channel 10 in Columbia. The Grade B contour of this station encompassed all of the WNOK–TV coverage area. In 1954 the Grade B contours of WRDW–TV and WJBF, two VHF stations in Augusta and the Grade B contour of WBTW, a VHF station in Florence, penetrated the WNOK–TV coverage area to within 11.5, 2.5 and 17 miles, respectively, of Columbia. A substantial portion of the WNOK–TV Grade B coverage area was then overlapped by the Grade B contours of stations in other cities. In 1957, VHF station WSOC–TV in Charlotte provided Grade B overlap in the area similar to that of WBTV, the other VHF station in Charlotte. In 1958, WJBF in Augusta expanded its coverage to extend the station's Grade B contour about 10 miles beyond Columbia resulting in the major portion of WNOK–TV's Grade B coverage area being overlapped by the coverage areas of stations in other cities. In 1961 when WOLO–TV began operation in Columbia on Channel 25, its Grade B contour was entirely within the like contours of WNOK–TV and WIS–TV and in part by that of four other stations. A number of stations changed facilities since 1961 with resultant enlargement of overlap areas. WNOK–TV changed facilities in 1961 and in 1968 and WOLO–TV made changes in 1964 and 1969. The present Grade B coverage areas of WNOK–TV and WOLO–TV are essentially the same and lie entirely within the Grade B contour of WIS–TV and partly within the Grade B contours of six other stations. There is a population of 18,481 persons or about 3% of the population served by WNOK–TV/WOLO–TV not included by the Grade B contours of stations in other cities. This would be reduced by 2,300 persons to 16,181 persons or 2.5% should WCSC–TV or WCIV be authorized to operate as proposed herein. *Impact on UHF—Wilmington, North Carolina and Augusta and Savannah, Georgia.*

25. The extent to which the present and proposed Grade B coverage areas of the three Charleston commercial VHF stations overlap the Grade B coverage area of present and assumed prospective UHF stations in the three cities is summarized in the following table:

Overlap of Grade B Coverage Area

[In percent]

	Wilmington (Ch. 29) *	Augusta (Ch. 26, 54) **	Savannah (Ch. 22) *
Charleston (pres.)	0	5	15
Charleston (prop.)	5	10	20

*Unoccupied
**Ch. 26—WATU-TV; Ch. 54—unoccupied

The local VHF stations in Wilmington and Augusta in each instance provide Grade B coverage to the entire Grade B coverage areas of the existing/prospective UHF stations. The VHF stations in the two cities are as follows: Wilmington—WWAY-TV (Ch. 3) and WECT (Ch. 6); Augusta—WJBF (Ch. 6) and WRDW-TV (Ch. 12). In the case of Savannah, the Grade B coverage areas of WSAV-TV (Ch. 3) and WTOC-TV (Ch. 11) are entirely encompassed by the Grade B contour of the UHF station, WJCL (Ch. 22).

26. In the Order designating the Charleston applications for hearing the Commission emphasized that while it "encourages television broadcast stations to operate with maximum facilities in order to make the most efficient use of the channel assignments" it also was concerned with "fostering the development of UHF broadcasting." Impact of the Charleston VHF station proposals on existing and prospective UHF stations in the Wilmington, North Carolina and Augusta and Savannah, Georgia areas was shown to be relatively small. Of greater magnitude and of more significant concern is the proposed expansion of VHF service in areas served by existing/prospective UHF stations in Florence and Columbia.

27. Adverse to a Florence UHF station would be the following considerations:

(a) The three Charleston commercial VHF stations would for the first time provide Grade B coverage in Florence.

(b) Grade B area overlap of prospective Florence UHF stations operating on channels 15 and 21 by the three Charleston stations would increase from the present 2 to 5% to approximately 40%.

(c) The addition of the proposed VHF service in areas receiving two and three Grade B services may tend to discourage potential applicants for a second or third commercial station in Florence, a city of nearly 25,000 persons.

(d) The three Charleston commercial VHF stations will for the first time provide Grade B coverage to three Florence ADI counties: Florence County—95 to 97% of the population including the county seat; Marion County—54 to 72% of the population including the county seat; Darlington County—10 to 12% of the population but not the county seat.

(e) NBC network reception service is available to Florence, from WIS-TV in Columbia and WECT in Wilmington and CBS network reception service from WBTW, the local station in Florence. WUSN-TV operating as proposed would provide Florence and a substantial part of the Grade V service area of a prospective UHF station therein with a first ABC network reception service. The availability in the area of all three network services may deter a potential applicant for a UHF facility in Florence. However, it might be argued that the inroads that existing ABC affiliates would make on the Grade B contour of a potential UHF applicant makes the economic viability of such a station doubtful, even with an ABC affiliation.

28. It seems unassailable that adverse to the existing prospective UHF stations in Columbia would be the following:

(a) Operation as proposed by the three Charleston commercial VHF stations would increase Grade B overlap with the Columbia UHF stations from about 5% to approximately 25%.

(b) Proposed WUSN–TV would duplicate ABC network reception service affecting 21% of the population in the Grade B coverage area of WOLO–TV, the ABC affiliate in Columbia, an increase from 1%.

(c) Proposed WCSC–TV would duplicate CBS network reception service affecting 25% of the population in the Grade B coverage area of WNOK–TV, the CBS affiliate in Columbia, an increase from 4%.

(d) The Charleston stations operating as proposed would reduce the number of persons now served by WNOK–TV/WOLO–TV but not by stations in other cities from 18,481 persons (3%) to 16,681 persons (2.5%), a difference of 2,300 persons.

(e) The Charleston stations operating as proposed would effect new or additional Grade B penetration of four Columbia ADI counties and one Charleston ADI county in which WNOK–TV/WOLO–TV serve in part: Calhoun County—from less than 10% to 81–85% of population and Grade B service to county seat; Orangeburg County—from approximately 35% to about 85% of population and Grade B service to county seat; Sumter County—from no service to 89–94% of the population and Grade B service to county seat; Lee County—from no service to 33–43% of the population but no service to county seat; Clarendon County (Charleston ADI)—from 42–74% to 100% of population and continued service to county seat.

29. In any fair test of the balancing of the net effects of the two Commission policies under review here, those matters, as illumined by the evidence favorable to a grant of the Charleston applications would also be in point. Among them would be:

(a) The three Charleston commercial VHF stations would almost double their Grade B service areas and populations.

(b) A significant portion of the gain area now receives only two and three Grade B television services.

(c) Because of increase in signal strength, television service in the present service areas would be improved.

(d) A first individual network reception service will be provided to new areas including 130,780 persons for ABC, 3,046 persons for NBC, and 22,132 persons for CBS.

(e) A first three-network service will be provided to new areas including 159,333 persons.

(f) A first noncommercial educational television service would be provided to 22,085 persons.

(g) Operation of four television stations from one tower is in accordance with Commission policy of encouraging use of antenna farms.

B. Economic Information and Data Relating to UHF Impact Issue

30. At present, the Area of Dominant Influence (ADI) of the Columbia, South Carolina, television stations consists of the "metro area," counties of Richland and Lexington (78,200 TV households) and the following additional counties (with the number of TV households shown in parentheses): Sumter (18,100), Orangeburg (16,500), Kershaw (8,700), Fairfield (4,400), Lee (4,200), and Calhoun (2,700). Clarendon County (5,400) had been in the Columbia ADI, but was shifted in 1969 to the Charleston ADI. For years the Columbia market has been dominated by the VHF station, WIS–TV. The revenue distribution in the market for 1969 follows the pattern of the preceding five years: WIS–TV had total revenues of $2,799,751 (or 74.7% of the

market total): WNOK–TV had $661,976 (17.7%),[54] and WOLO–TV had $288,276 (7.7%).

31. Although ARB's ADI concept has tended to minimize the Total Survey Area (TSA) differences among markets, ARB still reports each station's audience in the total area. A comparison of TV homes in the Charleston and Columbia markets shows the following:

	TV homes metro area	TV homes survey area	TV homes outside metro	Percent TV homes outside metro
Charleston	85,600	325,000	239,400	74
Columbia	78,200	618,200	540,000	87

32. Although the Columbia UHF stations, until the recent past, had drawn very little audience outside the metro area (see paragraph of the basic findings, above), the increase in UHF set penetration in the non-metro area to 77%, with prospects of 96% set penetration in due course, coupled with the recent improvement in power undertaken by the UHF stations would enhance the prospects of WNOK–TV and WOLO–TV gaining additional audience in the non-metro portion of the Columbia ADI. It seems probable that the area in which the UHF stations would make their principal gains is in the Columbia ADI counties of Calhoun, Lee, Orangeburg and Sumter and in Clarendon County which has shifted to the Charleston ADI. These are the counties in which the increase in overlap between the Columbia UHF stations and the Charleston stations would occur, assuming the Charleston grant. It is also probable that the four Columbia ADI counties will shift to the Charleston ADI, with a resultant drop in ARB national rank for the Columbia market. This would suggest a drop in national spot revenue in the Columbia market.

33. Additionally, (although seemingly a strange admixture of grammar) a loss can be foreseen of the "potential gain" which could be achieved by the UHF stations in these counties, if the Charleston applications were not granted. On the other hand a grant of the Charleston applications would not mean the loss of all revenues from these counties to WNOK–TV and WOLO–TV. A prediction could be sustained that the Charleston stations would take about half of the "potential" income for WNOK–TV and WOLO–TV from these counties. Although it can be conceded that if the UHF stations had no additional VHF competition during the next two years their audience may continue to grow and their share of viewing hours may increase.

34. The general manager of WCSC–TV predicted that the tall-tower operation could not possibly commence before September 1972, based upon the procedural history of the *Cosmos Broadcasting Corp., infra*, proceeding. Based upon experience, this timetable is not unreasonable.[55] Therefore it has been suggested, WNOK–TV and WOLO–TV

[54] WOLO–TV did not commence operation with increased power until November 1969.

[55] This assumes that the respondents, WIS–TV, WNOK–TV and WOLO–TV, would exhaust their administrative remedies in the event of a grant of the applications.

can count on a "breathing spell" of reasonable magnitude within which to develop viewing audiences in these counties. This prospect, should it occur, seems of little comfort to the respondents should their urgings be factual. It would, in essence, simply be postponing the execution date. The recent improvement in the facilities of WNOK–TV and WOLO–TV make it possible for the first time for viewers in these counties to receive all three networks without reorienting their antennas. Antenna rotors cost $40–60 and relatively few families in the UHF gain area have them. These facts if undisturbed by outside factors could further contribute to the economic health of those stations.

35. Standard Rate and Data Service figures show that the residents of the four above-named counties heavily favor Columbia newspapers over Charleston newspapers (see paragraph 56 of the basic proposed findings above). The counties are not only physically closer to Columbia but economically closer. When they go to a larger city to shop, they tend to go to Columbia—a fact which advertisers wish to encourage and develop. The counties are oriented both culturally and politically far more to Columbia, the state capital, than to Charleston.

36. While neither WNOK–TV nor WOLO–TV urged that the Charleston tall-tower proposal is causing their complete economic destruction or significantly crippling their ability to serve the public, neither could one, under the evidence adduced, suggest either a neutral effect or none at all on their overall commercial viability or the commercially natural quest to have their stockholders realize a higher rate of return on their investment.

37. The Broadcast Bureau in its proposed conclusions observed: "The question presented, namely whether the economic impact on the Columbia UHF stations will be such that it outweighs the public benefits to be derived from a grant of the Charleston applications, is a close one. Future economic impact is not an area subject to positive proof. It must perforce be based to a considerable extent on forecasts and inferences which can be drawn from economic data presently available." The Bureau also concluded: "The record in this proceeding does not establish the prospect of economic injury to the Columbia UHF stations from the Charleston VHF stations of such a magnitude as to require denial of the Charleston applications." The first, that the question "is a close one" is pithy indeed. The latter, when matched with the evidence and juxtaposed to the "impact issue" seems wide of the mark of hardheaded reality. Witness as one of several indicia the concise and indisputable observation of the Bureau: "Admittedly, operation of the Charleston stations from the proposed tall-tower will result in the Charleston stations achieving *some audience in the overlap area, and this audience will be achieved at the expense of the three Columbia stations.*" (Emphasis added). On this fact alone, one must have prudent doubts whether there would be no substantive impairment to their ability to compete effectively, i.e., the U's inter se and face-to-face with the V's on virtually the same ground with the prospect of artificial intruding barriers to maintaining present, if not gaining prospective customers (audience). The Commission has consistently and frequently expressed its concern for fostering the development of both existing

and potential UHF stations. It has also emphasized that this concern must be weighed against its policy of encouraging television stations to operate with maximum facilities in order to make the most efficient use of the channel assignment. When these two basic policies are in conflict a careful analysis of all the facts must be made so that the choice between them honors and serves the overall public interest.

38. Also, and crucial to the "impact issue", the evidence established and, thus, it is concluded that a grant of the Charleston applications would foreclose viable utilization of the Florence UHF channels. WUSN–TV would place a Grade B ABC signal over the city of Florence, thereby eliminating any chance of an ABC UHF affiliation. The existing VHF station in Florence carries CBS programs and NBC is supplied to Florence by WIS–TV, the Columbia VHF station. Florence is a relatively small market hemmed in by television stations in Wilmington, Charlotte and Columbia. The Commission in 1969 cancelled the outstanding construction permit of Rovan of Florence, Inc. because of its failure to construct. Also, Cosmos Cablevision Corp. operates a CATV system in Florence. The signal of WIS–TV covers 60% of the Grade B contour proposed by Rovan and the ABC affiliates in Wilmington, Columbia, Charlotte and Charleston presently cover an aggregate of 44% of the Grade B contour proposed by Rovan.

39. Though it must be admitted that the Commission is not and cannot be the hand-maiden of the economic well-being of any of its licenses, including UHF licensees, conversely, under its prevailing policy to "advance, encourage and foster the full use of the present UHF television band (channels 14–69) by commercial and educational interests" (Docket No. 14229—Report No. 6588, January 28, 1971), neither may one be heard to say that UHF spectrum users are to be rejected as abandoned waifs. Indeed, in its Report and Order, the Commission emphasized "The full use of this valuable asset can with imagination, thought and determination bring our society a fuller and richer variety of educational and entertainment programming which can both serve private and public needs and aspirations to the general advancement of our culture" (Eighth Report and Order, FCC 71–92, Docket No. 14229, released February 1, 1971).

40. With this fresh pronouncement of virtually vintage Commission policy, one might at a glance assess an end to the inquiry under the impact issue at this point even if one conceded that the parameters of adverse impact, in the tall-tower grant, were not great. Since the *Suburban* or Community Problems issue is yet to be addressed, more may be needed to reach that result in light of the various precedential situations illuminative of the subject at hand.

41. *In Cosmos Broadcasting Corporation*, 21 FCC 2d 729–733 (Review Board 1970), it was stated:

> It is definitely not the Commission's policy to insulate every UHF station or potential station from any possible small wind of VHF impact, where there is substantial service benefit involved in a different course, TV Table of Assignments, Docket No. 18453. In the final analysis, where, as here, UHF impact is in issue in a case involving a proposed transmitter move, a choice must be made between the Commission's policy of "encourag[ing] television broadcast stations to operate with maximum facilities in order to make the most efficient use of channel assignments" and the policy of "fostering the development of UHF

broadcasting" *South Carolina Educational Commission*, (WITV [a party applicant here] 18 FCC 2d 328, 331, 16 RR 2d 725, 729, reconsideration denied 20 FCC 2d 666, 17 RR 2d 1077 (1969) . . . Where substantial adverse impact on UHF service has been shown, the choice must be in favor of the Commission's protection policy, *Gala Broadcasting Company* . . . FCC 68–512, 13 RR 2d 103. On the other hand, in a case such as this one, where only minimal impact has been shown, Commission policy does not require us to deny applications to improve the operation of an existing VHF station.

42. To lay a fair test of the conditions found in *Cosmos* and companion cases, e.g., *Central Coast Television*, 14 FCC 2d 1002: *WLCY, Inc.*, 16 FCC 2d 506, with those here, some recognition and consideration, in a case with issues of this kind, must perforce be demonstrated from the record evidence. Without in any way circumscribing the values of the disciplines or specialized experience of the several experts employed on both sides of this case (indeed there is much to be admired in the depth of their knowledge, the metes and bounds of which might well exceed or elude the comprehension of the average layman) because at crucial points, variance and conflicts of opinion occur which tend to blur, if not muddy, a fair understanding of the real facts, more reliance will be placed on those experts, principally engineering, where discipline and expertise are not only time-tested within the history of the Commission but, as a general proposition, are less susceptible to serious challenge or unresolvable dispute. Though, as trier of the facts, all who testify, including the skilled or expert, are to be and will be given their due weight as evidential contributors to the record.

43. There was in *Cosmos* a contest with similar issues, but unlike here the respondents there had both the burden of proceeding with the introduction of the evidence and the burden of proof under the UHF impact issue. Here, the Charleston applicants are burdened preponderantly to show the likelihood that their proposed tall-tower would have less than a significant impact on one, some or all existing or prospective UHF television stations in the area. And, as was stated in Central Coast, supra at p. 1005, "Basic to resolution of the impact issue is the Commission's long-established public policy of encouraging the growth and development of UHF television stations, of fostering 'optimum conditions for the growth of UHF [television] and [of taking] no steps, unless required by other exceptional public interest considerations, which would reduce the demand for UHF service,' *Triangle Publications, Inc.*, (WNHC–TV), supra, 37 FCC 307, 320, 3 RR 2d 37, 53. The effect of that policy on the specific situation here present—a VHF transmitter move—has recently been defined by the Commission, which held that if a conflict arose, as it has in the instant case, 'the paramount policy of fostering UHF service would more than offset the policy of encouraging VHF stations to provide the best possible service to the largest number of persons'. Gala Broadcasting Company, FCC 68–512, 13 RR 2d 103, 105."

44. Although in *Cosmos* the VHF application was granted over the protests of the respondents, it seems fairly certain that that decision was principally based on respondents failure to sustain their evidential burden, not that any new departure from established precedent

or policy in these matters was contemplated (Cf. *Reconsideration Order Mount Vernon Television Report and Order*, 18 RR 2d at 1628.

45. Putting to the side (for the moment) the question of burden of proof, the evidence of record affirmatively suggests the conclusion that there will be a significant and substantial likelihood of a serious threat to effective UHF competition in the Columbia market on grant of the Charleston tall-tower proposal. That real danger arises when it is seen that the grant of the tall-tower inchoately frustrates effective UHF competition in the Columbia market. This threat may take any one of sereval forms: WOLO–TV has been historically a financially marginal station; only recently has it been in a position to undertake technical and programming improvements to enchance both its competitive position and its service to the public; with its substantial indebtedness incurred to finance its improvement of facilities and programs, it must develop additional audience if it is to survive and grow; Charleston operation from the tall-tower will seriously cripple if not destroy this potential for audience development.

46. At the very least WOLO–TV would be relegated to the role of a marginal station, limited to service in the metro area, unable to compete effectively in the Columbia market.

47. As to WNOK–TV, there is much less likelihood that it would be forced to discontinue operation. On the other hand, it, too, has engaged in a substantial building program, believes it must make costly additional improvements as fast as growth in revenues permits in order to be able to compete effectively in its market. In order to break even and provide a more competitive program service in the public interest, it must substantially increase its revenue; and like any other private business, WNOK–TV cannot operate indefinitely without being able to provide its owners with a reasonable return on their investment. Charleston operation from the tall-tower will seriously cripple if not totally destroy WNOK–TV's most realistic potential for audience development, thus limiting WNOK–TV's operation to that of a marginal operator, unable to compete effectively in the market.

48. In the event of normal UHF development, the Columbia market offers an attractive potential for new entry by an independent UHF station. The grant of the tall-tower would drastically reduce the attractiveness for new entry by any responsible investor.

49. These conclusions can be reached without regard to the question of burden of proof. If superimposed on these lines of inquiry is the requirement that the Charleston applicants bear the burden to disprove these compelling conclusions, there can be little doubt who should prevail.

50. Further conclusions touching on the overall question of impact are: both WOLO–TV and WNOK–TV have recently improved their operating facilities. At present they provide Grade B service to practically the entire Columbia ADI consisting of eight counties. Both stations have in the past had an extremely difficult time developing their audience in competition with WIS–TV. Particularly has this been true in the case of WOLO–TV. In order to become more competitive and provide better service, each has improved facilities but in the process has incurred substantial capital indebtedness and greatly increased operating costs.

51. The indebtedness, the increased costs attributable to the improvements, and normal increases in operating expenses that would occur, in any event, have to be met with increased revenues, which principally means increased audience. WOLO–TV has estimated that it will have to develop some 8,000 to 9,000 new prime-time homes outside of the metro area if it is to reach its objective of better programming service and survival. Thus, WOLO–TV, even without any additional Charleston service, faces a difficult challenge.

52. The record shows that there is very little potential for developing audience outside of the ADI, except in Clarendon County and possibly Newberry County. Within the ADI the largest area for potential UHF development by either WNOK or WOLO includes the four counties of Sumter, Orangeburg, Calhoun, and Lee. These four counties, plus Clarendon, provide approximately 31,000 UHF homes. The most recently available data, which largely antedates the WNOK–TV or WOLO–TV improvements, show no significant UHF share of the audience in these counties. Thus, they offer excellent growth potential. Their potential is enhanced by the fact that the counties to a large extent are oriented towards the Columbia market, both economically and culturally. Also, WIS–TV operating on Channel 10 has substantial viewing audience in these counties and thus affords a Columbia umbrella over the counties under which the UHF stations can develop.

53. WNOK–TV needs an increase in revenue of approximately $100,000 over 1969 revenues simply to break even and cover its amortization costs on new equipment. Additional revenue is needed to show a reasonable return on investment which in turn will justify further investment for improvements in facilities and programming service. WNOK–TV is currently reaching only about 3,700 homes outside of the "metro" counties, so again the five key counties offer a substantial potential for the development of the UHF audience.

54. What, then, will be the impact of the Charleston tall-tower operation on this critical need for audience growth? The engineering evidence establishes that there will be a significant penetration into the Columbia UHF service areas and that the penetration is particularly substantial in the five key counties. Whereas there are now only 45,000 in the five counties, from the tall-tower there will be approximately 175,000 persons.

55. The Charleston stations, it seems fair to state, seek improving their facilities in order to gain audience, an otherwise perfectly proper objective. In this respect it is significant that the five key counties contain close to 35 percent of the TV homes in the 19 counties in which the Charleston stations will pick up their major audience gains. Thus, these five counties represent a very important potential for Charleston.

56. An analysis of the strength in the county seats of these critical counties also is revealing. This shows that at the present with the exception of Clarendon County, the Columbia UHF stations enjoy a substantial signal advantage over the Charleston stations. From the tall-tower operation, the Charleston stations' signals will substantially exceed the Columbia UHF signal in Clarendon and would become approximately equal to the signal strength of the Columbia stations in the two major counties of Orangeburg and Sumter. The Columbia

signal strength advantage in Lee and Calhoun would be considerably diminished.

57. Added to these considerations are the well-known UHF handicaps. No purpose is served by detailing the difficulties which UHF stations face operating against VHF stations. For the first time in these five counties, Charleston would be able to provide roughly comparable service and offer three full network services from a single tower.

58. The principal area within which the Columbia UHF stations could hope to realize their needed increase in audience appear to be in the Columbia ADI, plus Clarendon County. Specifically, while there is potential for improvement in the two metro counties, the major potential lay in the counties outside of the metro but still within the ADI.

59. Of the six non-metro counties, four may be considered "key" counties (plus Clarendon). These counties can be selected as "key" counties because they are within the Columbia ADI and the preponderance of viewers in those counties are considered as viewing Columbia. There are some 46,000 homes in these counties with little current UHF viewership, and these are the counties into which the Charleston tall-tower will penetrate.

60. The potential value which these counties possess for the two UHF stations amounts conceivably to a not inconsiderable revenue increase to both WOLO–TV and WNOK–TV. An even greater potential can be seen as UHF set penetration increases or as the UHF ratings increased. Thus, as revenues increase, the two UHF stations would be in a position to enhance programming service to the public, thereby serving their own self interest as well as providing more effective competition in Columbia. The tall-tower would all but cancel the ability of the UHF stations to obtain this objective.

61. The spectre of the possibility of a drop in market ADI rank due to a shift of one or more counties could cause a consequent drop in national spot dollars flowing into the Columbia market. That there is a direct correlation between the rank of a market in number of ADI homes and the rank of a market in total national spot dollars is not altogether an undisputed fact among the "experts". There is reason, nevertheless, to prudently speculate that the lower the rank in ADI homes, the lesser the amount of national spot dollars. Thus, if all five counties were assigned to other ADI markets, the loss of national advertising dollars to Columbia could be considerable.

62. The potential loss in national dollars represented by these five counties is a matter of no mean significance. The Charleston stations have affirmatively urged that it is highly unlikely that all five counties would shift immediately from the Columbia ADI simply because of the operation from the tall-tower. Obviously conditions vary in the five counties, and all are not equally exposed to this threat and since the subject matter here lends itself more to prediction of the probable than to hard reality, it is not unreasonable to assume, under the evidence of record, the darker of the prediction.

63. Under ARB–ADI definitions the issue is whether a preponderance of the viewers would shift away from the Columbia stations to

some other market's stations. Clarendon viewers have already done this. There is also substantial risk that Orangeburg, with 16,500 homes, will be lost. There is also a substantial, albeit a lesser risk that Sumter County, with 18,100 homes, would in time shift out of the Columbia ADI. The proposed Grade B coverage of Sumter exceeds the present coverage of both Clarendon and Orangeburg counties which have already shifted or are close to shifting. There is much less of a threat in the case of Calhoun and Lee counties, but together these counties have only 7,100 TV homes and, so, are far less important than either Orangeburg or Sumter.

64. Even if not all counties are lost to the Columbia ADI, there is a reasonable prospect that at least one or more will be lost with a consequent and considerable drop in national spot dollars. Charleston's evidence, therefore, although not without merit, accordingly goes more to the question of how much revenue will be lost rather than whether there will be any loss at all. To the extent that the UHF stations now share approximately 9 percent of this revenue and hope to do better, they would be directly and adversely affected in their pursuit of essential additional revenue.

65. The Columbia market is a very profitable market and if the two UHF stations are able to develop into effective competitors the total amount of dollars generated in the market would provide an attractive opportunity for another new station. By the same token, the intrusion of three VHF signals from Charleston into these "key" counties would pretty much destroy the potential for new entry. If, as appears a realistic prospect with the advent of the tall-tower operation, the two existing UHF stations in Columbia must retrench and operate marginally in the metro area only, it is reasonable to conclude that no responsible investor would seriously consider applying for the available UHF channel in Columbia.

UHF Impact in the Florence Market

66. There seems little doubt and the record convincingly establishes that there is in the Florence ADI market some 73,200 TV homes. Indeed, the Broadcast Bureau suports the view that "a grant of the Charleston applications would foreclose viable utilization of Florence UHF channels." At the present time this market has been carved out by Station WBTW operating on Channel 13 and offering a CBS network service to the market. WBTW has been a profitable station. NBC service is available to the market from the neighboring station WIS–TV in Columbia and from WECT–TV in Wilmington.

67. However, there is no significant amount of ABC Grade B service in the Florence ADI; nor, according to ARB statistics for the Florence ADI, is there any significant share of viewing of ABC stations (9.5%). Thus, it seems fair to conclude that Florence offers a potential for a second station either on Channel 15 or 21 in the event that station could obtain an ABC affiliation.

68. Both opposing economic experts or consultants have expressed opinions that Florence offers a promising potential. In a Report given in August of 1968 in the form of an objective appraisal of

market potential, the consultant who testified for the Charleston applicants, at one time expressed such a view regarding the viability of the Florence market. In a detailed Economic Feasibility Report prepared for Rovan of Florence, Inc., a former holder of a construction permit for Channel 15 in Florence, he concluded that the UHF channel offered a sound and reasonable investment prospect, which within a few years could be worth at least $2,000,000. He no longer holds this view.

69. As further support for the opinions of these two experts, there is the fact that Rovan of Florence, Inc., did apply for and held a UHF construction permit to operate on Channel 15 from 1965 until August, 1969, at which point in time the Commission refused to extend the time for Rovan to construct. Concededly, obtaining and holding a permit is not absolute proof that construction would be completed. But it is some evidence of a *bona fide* interest in the market and some evidence as to that market's potential attractiveness.

70. Rovan of Florence, Inc., was the original petitioner in this proceeding. It sought to obtain a denial of the Charleston tall-tower applications for the reason that it feared a grant of the tall tower would make impossible its efforts to obtain an ABC network affiliation for Florence. Even its reasons for seeking additional time to construct were tied into this theme; namely, its belief that it should be allowed to await the outcome of this case before being forced to move ahead. Rovan stated under oath that it would be unable to secure a network affiliation and compete effectively in the market if the Charleston tall-tower were granted.

71. The Commission held that Rovan's failure to construct was attributable to its own assessment of the competitive situation and not due to "circumstances beyond its control." That policy question is not in issue here.

72. According to the Charleston applicants, one of the main service gains will be the providing of Grade B ABC service to this ABC "white area" in and around the Florence market. From their point of view, they will be serving a public need. But that very dearth of ABC service can also be filled by a local UHF ABC affiliate in the Florence market. This is what Station WPDT proposed to do. If there is this need for ABC service, this would support the conclusion that there is potential for yet another applicant such as Rovan.

73. The question then arises: What would happen to this potential if the three Charleston stations operate from the tall-tower. The evidence shows that all three stations would provide Grade B service to approximately 40 percent of a Florence UHF station's Grade B contour and that the Charleston Grade B contours would extend beyond Florence. In the two key counties of Florence and Marion (where there are over 30,000 TV homes out of 73,000), there is currently no Grade B Charleston service; from the tall-tower, service would be provided to approximately 95 percent of Florence County and 75 percent of Marion County. The market already receives primarily VHF service from WBTW and WIS–TV in Columbia. The intrusion of *three additional VHF signals* into this market would

make highly unlikely any realistic prospect for successful UHF development in Florence and certainly would kill any chance for an ABC affiliation.

74. It is fair to conclude that despite present doubts of the Charleston consultant there is established on the record some potential for UHF development in Florence. That potential is considerably more than minimal. By whatever standard one measures that potential, it would be virtually destroyed were the three Charleston stations permitted to operate from the tall-tower.

75. By way of summary, to crystallize the foregoing and, to repeat for emphasis sake, the principal proposition presented for test, analysis and determination is premised on the evidence adduced, whether a grant here "would impair the ability of authorized and prospective UHF television broadcast stations in the area to compete effectively, or would jeopardize, in whole or in part, the continuation of existing UHF television service" (Designation Order FCC 69–666 released June 26, 1969). That test and determination must, of necessity, take place within the crucible of two well established and yet prevailing Commission policies. The one which favors encouraging television broadcast stations to operate with maximum facilities in order to make the most efficient use of channel assignments; the other, the often expressed concern of the Commission, the fostering of the development of UHF broadcasting. In this case, not unlike a seeming growing number of others, these two policies appear on collision course.

76. As noted earlier, the burden of proceeding with the introduction of evidence with respect to the UHF impact issue was placed on the parties respondent while the burden of proof was correspondingly given to the parties applicant. Thus, assuming an evidential threshold showing, *prima facie*, of the elements subsumed with the "impact" issue on the part of the parties respondent, then it is incumbent upon the parties applicant, from the evidence of record, to demonstrate preponderantly that the postulates within that issue are, in a word, more fanciful than real.

77. The proponements of the grant of the applications have not sustained that burden. The Community Problems or *Suburban* issue is, however, resolved in their favor, all pertinent policy and precedent, under the evidence having been met and satisfied. In a word, the effective elimination of further prospects for UHF development at Florence, South Carolina, upon favorable grant of the Charleston proposal, does more than minimal violence to the affirmative policy of protecting and encouraging the development of UHF broadcasting in that area, which area would be substantially affected by and comprehended within the tall-tower proposal. Added to this crowning effect would be the major incursions in the Grade B areas of the Columbia stations from that of 5% to approximately 25% by the applicants' tall-tower. This would not only affect some duplication of networks service in the affected area but more importantly if the Columbia UHF stations are to improve their commercial viability by becoming more commercially attractive to broadcast advertisers, be they local, national spot or networks, they will also have to attract viewers, new viewers and the best prospects for that condition would be in the key

109-026—73——9

counties alluded to earlier and not be satisfied by the unnatural stricture of the audience potential in the present metro areas. Excellence of programming, if one should suggest a cure, alone—a difficult task for UHF operators, in any event—would not wash away the ill-effects on competitive actual and potential of the UHF operators here and prospective by the major presence of these established commercial Charleston VHF's in the same area.

78. Though no one can be heard to stretch or distort the UHF protection policy of the Commission to that of a hand-maiden to, or guardian angel of commercial success to UHF broadcasters, on the other hand, that policy whatever its bounds, is hardly equivalent, to indulge a canard, a sink or swim one. The residual effects of a favorable grant here, more than amounting to a "small wind" to the daily tasks of the UHF operators, would be the occasion of a violent storm, likely, more than poetically, of hurricance force. Rather than encouraging and fostering the development of UHF in the area of concern, the tall-tower proposal discourages and is a deterrence, in a substantial way, to that end. That being the persuasion, from the evidence adduced, the conclusion is compelling.

79. A further word is appropriate here. Whatever the dimensions of the opportunity placed before the educational TV applicant, South Carolina Educational Commission (SCETV), (WITV), in being associated with three commercial applicants in the tall-tower proposal, nothing here is, nor can be, intended to definitively eliminate or prejudice its plans or goals. This, notwithstanding the failure by this decision to realize a first non-commercial television Grade B service to some 22,085 persons. SCETV is a broadly based state-wide system presently comprising five television stations (including WITV) as well as closed-circuit operations receiving some 250 secondary schools in the state with the principal television production center at Columbia. Indeed, a recent authorization is held by WITV for a 316 kilowatts ERP at 850 above average terraine facility. This is a considerable improvement on its current 28.8 kilowatt ERP 220 feet facility. In sum, while the betterment of educational television is of special concern to all, nothing here will impose any inordinate impediment to that concern.

Accordingly, premised on the foregoing [56] and the public interest so requiring, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by a party or the Commission reviews the Initial Decision on its own motion under Section 1.276 of the Rules, the instant commercial applications for a construction permit to operate from a common 2000′ tower BE AND ARE HEREBY DENIED; and IT IS FURTHER ORDERED, solely to the extent that South Carolina Educational Television Commission (WITV) application is contingent upon the grant of the aforesaid applications, that its application BE AND IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
JAMES F. TIERNEY, *Hearing Examiner.*

[56] Appendices are intended for convenience. In any event, they are incorporated and are an integral part hereof.

APPENDIX I

GLOSSARY

ADI (Area of Dominant Influence)—An American Research Bureau concept consisting of all counties within the total survey area of a television market in which the viewing hours are dominated by the stations in that market. Each county in the nation is assigned to only one ADI.

Metro Area—A television market concept consisting of standard metropolitan statistical area (SMSA), as defined by the Bureau of the Budget, with limited modifications made for the specifics of the local television situation.

Metro Rating—The percentage of households in the metropolitan area viewing a specific station during a specific time period.

Total Survey Area (TSA)—The counties surrounding a market in which is located at least 98% of that market's home stations' net weekly circulation. A county can appear in more than one survey area.

Net Weekly Circulation—The number of homes viewing a station for at least 5 minutes in a seven day period.

Television Market Analysis (TMA)—An American Research Bureau publication compiled annually which contains various types of audience distribution and financial information pertaining to the television markets of the United States. The most recent TMA, that for 1969, was published in the early Fall of 1969 (after receipt of FCC 1968 financial information) and contained audience information for 206 United States television markets and financial information for 121[1] of the 206 markets.

ARB Local Market Reports—A compilation published several times a year of average quarter-hour audiences delivered by each station in a particular ARB market during a four week measuring period. In the case of the November, 1969 market reports for Charleston and Columbia, South Carolina, the four week measuring period commenced on October 29, 1969 and terminated on November 25, 1969.

ARB County Viewing Share Studies—ARB Reports published every two years for each state which give a county-by-county analysis of the shares of viewing hours accounted for by all television stations which have a measurable audience in a particular county. The measuring period consists of several local market report measuring periods. In the case of "Coverage 69, South Carolina County Report", the measuring periods consisted of October-November, 1968 and January, February, March and May, 1969.

APPENDIX II

BIOGRAPHICAL INFORMATION REGARDING THE WITNESSES WHO TESTIFIED CONCERNING THE "UHF IMPACT" ISSUE

A. WITNESSES OF OBJECTORS WHO TESTIFIED ON DIRECT

1. *Robert E. L. Kennedy:* Mr. Kennedy is a Registered Professional Engineer in the District of Columbia; a member of the consulting engineering firm of Kear and Kennedy.

2. *Martin H. Seiden:* Dr. Seiden is President of M. H. Seiden, Inc., an economic consulting firm. He received a B.A. degree in Economics from the City College of New York, an M.A. degree in Economics from Columbia University and a PH.D. degree in Economics from Columbia University.

3. *H. Moody McElveen, Jr.:* Mr. McElveen is Executive Vice President and General Manager of Palmetto Radio Corporation, licensee of WNOK AM–FM–TV, Columbia, South Carolina.

4. *Taliaferro Simpson:* Mr. Simpson is Assistant Vice President for Operations of the Cy N. Bahakel stations WCCB–TV, Charlotte, North Carolina; WKAB–TV, Montgomery, Alabama; WCBG AM–TV, Greenwood, Mississippi; WBBJ–TV, Jackson, Tennessee; WWOD AM–FM, Lynchburg, Virginia; KXEL AM–FM, Waterloo, Iowa; WKIN, Kingsport, Tennessee; WDOD AM–FM, Chattanooga, Tennessee; and WOLO–TV, Columbia, South Carolina.

[1] The first 72, ranked by TV homes, and the balance from markets ranked 74–160 by TV homes.

B. WITNESSES OF APPLICANTS WHO TESTIFIED ON DIRECT

1. *Oscar Reed, Jr.:* Mr. Reed is a Registered Professional Engineer in the District of Columbia and is employed by the Jansky & Bailey Broadcasting Television Department of Atlantic Research Corporation, a Division of the Susquehanna Corporation, Alexandria, Virginia.

2. *Lowell R. Wright, Jr.:* Mr. Wright is a practicing Aeronautical Consultant, having established a consulting business in 1953. He was employed prior thereto by the Civil Aeronautics Administration, predecessor to the Federal Aviation Administration, for 16 years.

3. *Richard P. Doherty:* Mr. Doherty is a Consultant in the field of Broadcast Economics and Broadcast Station Management Operations. He received an AB degree in Economics from Clark University and a Masters degree in Economics from Brown University.

4. *William M. Nugent:* Mr. Nugent is Group Research Manager of Edward Petry & Company, Inc., national sales representatives for television and radio stations.

5. *John M. Rivers:* Mr. Rivers received an AB degree from the University of Pennsylvania and was employed by the South Carolina National Bank from 1924 until 1935 when he resigned as Assistant Vice President in Charge of Investments and entered the stock and bond brokerage business. He is presently General Manager and principal stockholder of WCSC, Inc., the licensee of WCSC AM–FM–TV, Charleston, South Carolina, having served as President since 1938.

6. *Henry J. Cauthen:* Mr. Cauthen is General Manager of the South Carolina Educational Television Commission, the licensee of educational station WITV, and has served as Chief Executive Officer for the Commission since 1965.

C. WITNESSES OF OBJECTORS WHO TESTIFIED ON REBUTTAL

1. *Martin H. Seiden:* See above.

2. *Richard T. Laughridge:* Mr. Laughridge has been with WNOK–TV since 1953 and has been Vice President for Sales since 1968.

3. *Robert J. Kizer:* Mr. Kizer is Administrative Vice President and Director of Television Sales for Avery-Knodel, Inc., national sales representatives for television and radio stations.

APPENDIX III

Since 1949, various television stations have commenced operation in South Carolina and adjoining states and their facilities have been improved from time to time. These changes are directly related to the question of UHF impact which is at issue in this case. In order to conveniently follow the continuing changes that have been made relative to television allocations in this part of the United States, the facilities and dates of commencement of operation of those stations that are pertinent and relevant to this proceeding are tabulated below.

PERTINENT ASSIGNMENTS AND FACILITIES[1]

(Applicants' Ex. 2, Table 1, pp. 1–6; Ex. 22, pp. 1–10; Tr. 1091)

Community	Station	Channel	Operation commenced	Facility
Charleston, S.C.	WUSN–TV	2	9–6–54	100 kW, 780 ft.
		2		Req: 100 kW, 1860 ft.
	WCIV	4	10–28–62	100 kW, 790 ft.
		4	5–22–67	100 kW, 940 ft.
		4		Req: 100 kW, 1950 ft.
	WCSC–TV	5	6–19–53	100 kW, 470 ft.
		5	3–7–59	100 kW, 1000 ft.
		5		Req: 100 kW, 1950 ft.
	WITV	*7	1–19–64	28.8 kW, 220 ft.
		*7	CP: 2–18–70	70.8 kW, 850 ft. DA. 144 kW, Hor. Max.
		*7	MCP: 4–23–70[2]	132 kW, 850 ft. DA. 316 kW, Hor. Max.
		*7		Req: 240 kW, 1720 ft. Hor. 316 kW, 1720 ft. Max.

Footnotes at end of table.

Community	Station	Channel	Operation commenced	Facility
Columbia, S.C.	WIS-TV	10	11-7-53	269 kW, 640 ft.
		10	11-2-64	316 kW, 1550 ft.
	WNOK-TV	67	9-1-53	74.1 kW, 630 ft.
		19	6-12-61	214 kW, 640 ft. Hor. 245 kW, 640 ft. Max.
		19	7-16-68	1,046 kW, 640 ft. Hor. 1,250 kW, 640 ft. Max.
	WOLO-TV	25	9-29-61	191 kW, 440 ft. Hor. 195 kW, 440 ft. Max.
		25	8-4-64	174 kW, 610 ft. Hor. 178 kW, 610 ft. Max.
		25	Nov. 1969	871 kW, 620 ft. Hor. 1,205 kW, 620 ft. Max.
	WRLK-TV	*35	9-1-66	513 kW, 1,030 ft. Hor. 617 kW, 1,030 ft. Max.
		57		Unassigned.
Florence, S.C.	WBTW	8	10-18-54	316 kW, 790 ft.
		13	10-1-62	316 kW, 790 ft.
		13		Req.: 291 kW, 1,960 ft.
	(WPDT)	15	CP Canceled, 7-15-69.	141 kW, 910 ft.
	WJPM-TV	*33	9-28-67	537 kW, 790 ft. Hor. 646 kW, 790 ft. Max.
		21		Unassigned.
Wilmington, S.C.	WWAY-TV	3	10-30-64	100 kW, 1,170 ft.
	WECT	6	4-12-54	53.7 kW, 360 ft.
		6	2-7-69	83.2 kW, 1,940 ft.
		6	5-5-69	100 kW, 1,940 ft.
	WUNJ-TV	*39	CP	525 kW, 930 ft. Hor. 646 kW, 930 ft. Max.
		29		Unassigned.
Augusta, Ga.	WJBF	6		(3)
		6	CP: 2-1-54	100 kW, 610 ft.
		6	1-6-58	100 kW, 1,370 ft.
	WRDW-TV	12	2-14-54	100 kW, 650 ft.
			7-23-63	295 kW, 1,590 ft.
	WATU-TV	26	12-24-68	340 kW, 1,580 ft. Hor. 800 kW, 1,580 ft. Max.
		54		Unassigned.
Savannah, Ga.	WSAV-TV	3	2-1-56	32.7 kW, 370 ft.
		3	9-18-60	100 kW, 480 ft.
	WVAN-TV	*9	9-16-63	316 kW, 1,050 ft.
	WTOC-TV	11	2-14-54	207.5 kW, 480 ft.
		11	9-27-60	316 kW, 480 ft.
	WJCL	22	MCP: 10-23-69	537 kW, 1,430 ft. Hor. DA. 1,910 kW, 1,430 ft. Max.
Greenville-Spartanburg, S.C.-Asheville, N.C.				
Greenville	WFBC-TV	4	12-21-53	100 kW, 1,140 ft.
		4	1-10-58	100 kW, 2,000 ft.
Spartanburg	WSPA-TV	7	1-28-54	316 kW, 450 ft.
		7	11-18-63	294.4 kW, 2,000 ft.
Asheville	WLOS-TV	13	9-18-54	170 kW, 2,850 ft.
		13	2-21-62	121 kW, 2,830 ft.
		16		Unassigned.
		21		Unassigned.
		49		Unassigned.
Greenville	WNTV	*29	9-25-63	240 kW, 1,140 ft.
		*29	1-23-67	347 kW, 1,140 ft.
Asheville	WUNF-TV	*33	8-31-67	3.63 kW, 2,620 ft. DA.
Asheville	WANC-TV	62	7-5-63	24.1 kW, 420 ft.

Footnotes at end of table.

Community	Station	Channel	Operation commenced	Facility
Charlotte, N.C.	WBTV	3	7-15-49	16.3 kW, 1,070 ft.
	WSOC-TV	9	4-25-57	316 kW, 1,190 ft.
	WCCB-TV	18	12-31-53	589 kW, 1,130 ft.
		18	8-20-69	518 kW, 1,290 ft. Hor. 5,000 kW, 1,290 ft. Max.
	WCTU-TV	36	7-9-67	575 kW, 1,350 ft. Hor. 1,260 kW, 1,350 ft. Max.
	WTVI	*42	8-26-65	214 kW, 450 ft.
Allendale, S.C.	WEBA	*14		557 kW, 800 ft. Hor. 661 kW, 800 ft. Max.

*Educational.

[1] Where there was a variance in the exhibits from licensed values, the figures have been rounded off or completed to indicate license values.

[2] On Aug. 4, 1970 WITV was granted a modification of CP (BMPET-678) to operate with 129 kW, 890 ft., DA (309 kW, Hor. Max.) in lieu of 132 kW, 850 ft., DA (316 kW, Hor. Max.). Change in contour locations is decisionally insignificant.

[3] License files show Station WJBF was granted a CP for 23.4 kW, 610 ft. on 9-16-53. It was granted an STA for transmitter power output of 0.5 kW in lieu of 5 kW and temporary 70 ft. rooftop antenna on 9-18-53. It was granted a CP for 100 kW, 610 ft. on 2-1-54, Program Test Authority for same on 7-8-54 and license for same on 10-1-54.

Additional data concerning CATV Systems

As corollaries to briadcasting service in South Carolina, the Charleston applicants submitted evidence relative to CATV operations owned by Cosmos Cablevision Corp. and TV Cable Co., Inc. The communities, ownership and locations with respect to various Grade B contours are as follows:

Community	Ownership	Grade B Contour [4]
North Augusta, S.C. (franchise)	Cosmos Cablevision Corp.	Just outside WIS-TV.
Charlotte, N.C.	do.	Do.
Shaw Airforce Base, Sumter County, S.C. (franchise).	do.	Inside recent past WNOK-TV and WOLO-TV; also inside present WIS-TV, WNOK-TV and WOLO-TV, and proposed WCIV.
Sumter, S.C.	do.	Just outside recent past WNOK-TV and WOLO-TV; inside present WIS-TV, WNOK-TV and WOLO-TV, and proposed WCIV.
Darlington, S.C.	do.	Just outside proposed WCIV; inside WIS-TV.
Florence, S.C.	do.	Inside WIS-TV and proposed WCIV.
Marion, S.C.	do.	Just outside WIS-TV; inside proposed WCIV.
Conway	TV Cable Co., Inc.	Inside proposed WCIV.
Myrtle Beach, S.C.	do.	Do.
Georgetown, S.C. (franchise)	do.	Inside present and proposed WCIV.

[4] The network affiliations are: WIS-TV and WCIV-NBC; WNOK-TV-CBS; WOLO-TV-ABC.

Cosmos Cablevision Corp. is a wholly owned subsidiary of Cosmos Broadcasting Corporation. The latter also owns and operates VHF Station WIS-TV in Columbia, S.C. Mr. G. Richard Shafto is a director of Cosmos Broadcasting Corporation but is no longer in active management. He owns 33⅓% of TV Cable Co., Inc. and his wife, Treva Shafto, owns 22¼% of TV Cable Co., Inc. (Tr. 461–466; Applicants' Ex. 2, Fig. 6A, p. 4; Ex. 20, p. 4; Television Factbook, Services Volume, 1969–1970 Edition, pp. 495–a, 545–a, 546–a, 602a).

The overlap and penetration of UHF services of the stations in the individual markets of Columbia and Charlotte are the result of the improvements sought by a single management, Mr. C. N. Bahakel, who owns 100% of Station WCCB-TV and votes 100% of the stock of Station WOLO-TV according to data obtained from TV Factbook 1969–70 (Pages 537–b and 677–b) (Applicants' Ex. 22, p. 4, footnote).

SIGNAL GRADES/FIELD STRENGTHS

Station	Ch.	Manning, Clarendon Co.		St. Mathews, Calhoun Co.		Sumter, Sumter Co.		Bishopville, Lee Co.		Orangeburg, Orangeburg Co.	
		dbu	Grade	dbu	Grade	dbu	Grade	dbu	Grade	dbu	Grade
WNOK-TV	19	64.8	B	79.8	A	72.8	B	68.9	B	72.3	B
WOLO-TV	25	65.2	B	79.1	A	73.8	B	69.1	B	72.1	B
WIS-TV	10	79.5	PCG	87.0	PCG	89.4	PCG	87.5	PCG	78.2	PCG
WUSN-TV	2	47.5	B	38.8	(*)	36.8	(*)	26.3	(*)	42.3	(*)
WUSN-TV (prop)	2	63.8	B	51.5	B	53.5	B	44.0	(*)	52.0	B
WCSC-TV	5	49.5	B	41.0	(*)	38.5	(*)	28.0	(*)	43.8	(*)
WCSC-TV (prop)	5	64.5	B	52.2	B	54.0	B	44.9	(*)	52.8	B
WCIV	4	49.5	B	39.5	(*)	37.5	(*)	27.8	(*)	42.5	(*)
WCIV (prop)	4	64.0	B	52.5	B	54.3	B	45.6	(*)	52.5	B
WRDW			(*)		(**)		(*)		(*)		(**)
WJBF			(*)		(**)		(*)		(*)		(**)
WBTW			(**)		(*)		(**)		PCG		(*)
WATU-TV	26		(*)		(**)		(*)		(*)		(**)

*Less than Grade B.
**At least Grade B.
§ Low band VHF—Grade A=68 dbu; Grade B=47 dbu; PCG=74 dbu. High band VHF—Grade A=71 dbu; Grade B=56 dbu; PCG=77 dbu. UHF—Grade A=74 dbu; Grade B=64 dbu; PCG=80 dbu.

GRADE B COUNTY AREA COVERAGE

[In percent]

Station	Ch.	Clarendon	Calhoun	Sumter	Lee	Orangeburg
WNOK-TV	19	45	100	90	90	80
WOLO-TV	25	40	100	90	90	80
WIS-TV	10	100	100	100	100	100
WUSN-TV	2	48	5			40
WUSN-TV (prop.)	2	100	68	85	43	72
WCSC-TV	5	65	10			45
WCSC-TV (prop.)	5	100	75	90	50	75
WCIV	4	65	8			45
WCIV (prop.)	4	100	75	90	50	75
WRDW	12		85			75
WJBF	6		95			80
WBTW	13	70		90	100	
WATU-TV	26		50			60

AREA AND POPULATION STATISTICS, WNOK-TV AND WOLO-TV

County ADI assigned market	Total county		WNOK-TV (1968)		WOLO-TV (1969)	
	Population	Area (sq. mi.)	Area gain (percent)	Population gain	Area gain (percent)	Population gain
1. Richland-Columbia Metro ADI	200,102	748	0	0	0	0
2. Lexington-Columbia Metro ADI	60,726	708	0	0	0	0
3. Kershaw-Columbia ADI	33,585	786	28	4,348	28	4,634
4. Fairfield-Columbia ADI	20,713	699	4	136	10	409
5. Orangeburg-Columbia ADI	68,559	1,105	40	15,254	50	20,662
6. Clarendon-Charleston ADI	29,490	598	42	14,410	36	8,004
7. Calhoun-Columbia ADI	12,256	377	2	131	8	1,046
8. Sumter-Columbia	74,941	665	40	7,698	40	9,080
9. Lee-Columbia ADI	21,832	409	55	13,562	55	12,162
10. Lancaster-Charlotte ADI	39,352	504	40	26,394	40	27,128
11. Chester—G-S-A* ADI	30,888	585	55	16,759	53	18,095
12. Newberry—G-S-A* ADI	29,416	636	45	7,687	45	17,863
13. Saluda-Augusta ADI	14,554	442	50	7,481	50	9,927
14. Edgefield-Augusta ADI	15,735	481	20	5,326	10	3,999
15. Aiken-Augusta ADI	81,038	1,097	30	8,317	30	4,495
16. Bamberg-Augusta ADI	16,274	395	30	9,449	20	1,647
17. Barnwell-Augusta ADI	17,659	553	25	7,907	15	2,312
18. Chesterfield-Florence ADI	33,717	793	2	107	3	123
19. Union, S.C.—G-S-A* ADI	30,015	515	25	1,966	15	1,706
20. Laurens—G-S-A* ADI	47,609	701	2	340	0	0
21. Darlington-Florence ADI	52,928	545	3	815	3	525
22. Greenwood	44,346	447	1	28	0	0

*Greenville-Spartanburg-Asheville.

TABLE A (POPULATION)

County and ADI [6] assigned market	County population	New Grade B coverage (gain)					
		WUSN–TV	Percent	WCIV	Percent	WCSC–TV	Percent
Florence-Florence ADI	84,438	80,006	95	81,421	97	81,421	97
Marion-Florence ADI	32,014	17,469	54	23,192	72	23,192	72
Horry-Wilmington ADI	68,247	55,653	82	59,529	87	59,529	87
Jasper-Savannah ADI	12,237	3,580	29	3,747	31	3,432	28
Beaufort-Savannah ADI	44,187	417	1	556	1	278	1
Hampton-Charleston ADI	17,425	6,724	39	7,053	41	6,971	40
Annendale-Augusta ADI	11,362	162	1	324	3	324	3
Bamberg-Augusta ADI	16,274	8,114	50	8,637	53	8,255	51
Darlington-Florence ADI	52,928	5,324	10	6,615	12	6,615	12
Dillon	30,584	----------		28	----------	28	----------
Charleston	216,382	(*)	(*)	(*)	(*)	(*)	(*)
Berkeley	38,196	(*)	(*)	(*)	(*)	(*)	(*)
Dorchester	24,383	(*)	(*)	(*)	(*)	(*)	(*)
Georgetown	34,798	9,544	27	5,957	17	4,288	12
Williamsburg	40,932	15,789	39	6,880	17	4,440	11
Clarendon-Charleston ADI	29,490	17,227	58	9,369	32	7,578	26
Colleton	27,816	1,056	4	691	2	393	1
Orangeburg-Columbia ADI	68,559	35,955	52	34,728	51	33,584	49
Calhoun-Columbia ADI	12,256	9,832	80	9,862	80	9,339	76
Sumter-Columbia ADI	74,941	66,767	90	70,261	94	70,261	94
Lee-Columbia ADI	21,832	7,150	33	9,446	43	9,446	43
Richland-Columbia Metro ADI	200,102	3,366	2	3,978	2	3,978	2

[6] Area of Dominant Influence, defined by the American Research Bureau as "an exclusive geographic area consisting of all counties in which the home-market stations receive a preponderance of total viewing hours."

*Entirely within present Grade B.

TABLE B (AREA)

County and ADI assigned market	County area (sq. mi.)	Proportionate Grade B Coverage in Percent [7]					
		WUSN–TV		WCIV		WCSC–TV	
		Present	Gain	Present	Gain	Present	Gain
Florence-Florence ADI	805	----------	95	----------	97	----------	97
Marion-Florence ADI	480	----------	70	----------	75	----------	75
Horry-Wilmington ADI	1,152	----------	85	----------	92	----------	92
Jasper-Savannah ADI	662	20	8	23	4	25	5
Beaufort-Savannah ADI	588	75	3	78	2	80	1
Hampton-Charleston ADI	562	15	15	18	22	20	20
Allendale-Augusta ADI	418	----------	2	----------	4	----------	4
Bamberg-Augusta ADI	395	20	53	23	56	25	55
Darlington-Florence ADI	545	----------	7	----------	10	----------	10
Dillon	407	----------	----------	----------	1	----------	1
Charleston	945	100	----------	100	----------	100	----------
Berkeley	1,100	100	----------	100	----------	100	----------
Dorchester	569	100	----------	100	----------	100	----------
Georgetown	813	75	25	90	10	93	7
Williamsburg	931	75	25	90	10	93	7
Clarendon-Charleston ADI	598	48	52	65	35	65	35
Colleton	1,048	95	5	97	3	98	2
Orangeburg-Columbia ADI	1,105	40	32	45	30	45	30
Calhoun-Columbia ADI	377	5	63	8	67	10	65
Sumter-Columbia ADI	665	----------	85	----------	90	----------	90
Lee-Columbia ADI	409	----------	43	----------	50	----------	50
Richland-Columbia Metro ADI	748	----------	7	----------	12	----------	12

[7] Present Grade B coverage estimated from Applicant's Exhibit 2, Fig. 1

DISTRIBUTION OF CHARLESTON TELEVISION REVENUES AND INCOME [8]

	Charleston	WCSC-TV		WCIV		WUSN-TV	
		Amount	Percent	Amount	Percent	Amount	Percent
B/c Revenues:							
1969	$2,805,399	$1,157,501	41.3	$896,918	32.0	$750,980	26.8
1968	2,595,554	1,115,890	43.0	798,777	30.8	680,887	26.2
1967	2,352,784	963,855	41.0	683,986	29.1	704,943	30.0
1966	2,320,513	955,079	41.2	635,856	27.4	729,578	31.4
1965	2,087,921	892,044	42.7	550,619	26.4	645,258	30.9
1964	2,101,718	929,930	44.2	463,373	22.0	708,415	33.7
Network sales:							
1969	801,575	280,072	34.9	265,473	33.1	256,030	31.9
1968	762,715	261,410	34.3	261,906	34.3	239,399	31.4
1967	776,717	265,295	34.2	259,741	33.4	251,681	32.4
1966	801,248	278,222	34.7	249,440	31.1	273,586	34.1
1965	761,198	272,516	35.8	250,759	32.9	237,923	31.3
1964	793,414	270,785	34.1	234,109	29.5	289,520	36.5
Spot sales:							
1969	948,744	534,548	56.3	230,098	24.3	184,098	19.4
1968	672,899	411,922	61.2	156,323	23.2	104,656	15.6
1967	569,163	338,086	59.4	85,737	15.1	145,340	25.5
1966	609,334	321,640	52.8	122,278	20.1	165,416	27.1
1965	502,197	296,048	59.0	71,989	14.3	134,160	26.7
1964	526,964	345,930	65.6	31,341	5.9	149,693	28.4
Local sales:							
1969	1,357,185	473,603	34.9	499,696	36.8	383,886	28.3
1968	1,382,274	541,641	39.2	458,711	33.2	381,922	27.6
1967	1,145,977	418,895	36.6	382,616	33.4	344,466	30.1
1966	1,072,297	402,920	37.6	320,515	29.9	348,862	32.5
1965	931,393	355,100	38.1	264,771	28.4	311,522	33.4
1964	862,802	319,236	37.0	222,526	25.8	321,040	37.2
Income:							
1969	178,480	153,784	[9] 50.0	153,825	[9] 50.0	129,129	--------
1968	243,651	147,166	[9] 53.6	127,393	[9] 46.4	30,908	--------
1967	266,988	126,335	47.3	67,640	25.3	73,013	27.3
1966	475,057	136,391	28.7	137,428	28.9	201,238	42.4
1965	330,329	100,418	30.4	80,631	24.4	149,280	45.2
1964	368,127	129,567	35.2	22,601	6.1	215,959	58.7

[8] Broadcast Revenues, Form 324, Schedule 1, line 19; Network Sales, line 6; Spot Sales, line 8, Local Sales, line 9 (1964–69).

[9] Percentages based on total income of WCSC-TV and WCIV.

DISTRIBUTION OF COLUMBIA TELEVISION REVENUES AND INCOMES[10]

	Columbia	WIS-TV		WNOK-TV		WOLO-TV	
		Amount	Percent	Amount	Percent	Amount	Percent
B/c revenues:							
1969	$3,750,003	$2,799,751	74.7	$661,976	17.7	$288,276	7.7
1968	3,387,724	2,513,297	74.2	588,879	17.4	285,548	8.4
1967	2,864,911	2,148,759	75.0	490,985	17.1	225,167	7.9
1966	2,786,251	2,076,756	74.5	514,058	18.4	195,437	7.0
1965	2,492,795	1,885,127	75.6	423,328	17.0	184,340	7.4
1964	2,260,393	1,705,151	75.4	380,476	16.8	174,676	7.7
Network sales:							
1969	726,789	504,029	69.4	118,718	16.3	104,042	14.3
1968	734,810	521,353	71.0	107,541	14.6	105,916	14.4
1967	687,790	483,227	70.3	109,680	15.9	94,883	13.8
1966	662,732	446,141	67.3	110,408	16.7	106,183	16.0
1965	633,042	431,794	68.2	106,345	16.8	94,903	15.0
1964	574,663	394,598	68.7	102,819	17.9	77,246	13.4
Spot sales:							
1969	2,012,541	1,832,200	91.0	115,857	5.8	64,484	3.2
1968	1,684,947	1,528,723	90.7	102,918	6.1	58,306	3.2
1967	1,492,296	1,422,729	95.3	39,037	2.6	30,530	2.0
1966	1,534,107	1,456,109	94.9	45,225	2.9	32,773	2.1
1965	1,433,448	1,374,206	95.9	27,360	1.9	31,882	2.2
1964	1,259,207	1,209,098	96.0	29,037	2.3	21,072	1.7
Local sales:							
1969	1,313,180	724,016	55.1	465,370	35.4	123,794	9.4
1968	1,246,082	695,744	55.8	419,021	33.6	131,317	10.5
1967	988,809	537,245	54.3	350,329	35.4	101,235	10.2
1966	913,601	491,001	53.7	361,736	39.6	60,864	6.7
1965	740,066	380,804	51.5	299,848	40.5	59,414	8.0
1964	673,191	333,311	49.5	252,000	37.4	87,880	13.1
Income:							
1969	1,201,576	1,193,459	[11] 95.7	53,286	[11] 4.3	(45,169)	
1968	1,155,498	1,080,577	93.5	60,859	5.3	14,062	1.2
1967	967,915	909,115	[11] 91.3	86,888	[11] 8.7	(28,088)	
1966	1,077,046	929,800	86.3	138,982	12.9	8,264	.8
1965	951,853	856,504	90.0	90,740	9.5	4,609	.5
1964	695,054	668,314	[11] 92.0	57,859	[11] 8.0	(31,119)	

[10] Broadcast Revenues, Form 324, Schedule 1, line 19; Network Sales, line 6; Spot Sales, line 8; Local Sales, line 9 (1964-68); 1969 figures based on Statements of Messrs. Simpson and McElveen.
[11] Percentage based on total Income of WIS-TV and WNOK-TV.

APPENDIX IV

COUNTY ANALYSIS—APPLICANTS' NATIONAL SPOT SPECIALIST

(1) *Clarendon County*—This county has been repeatedly cited by the UHF stations as harbinger of dire things to come. Its switch in 1969 from the Columbia to the Charleston ADI is cited by the UHF stations as a prime example of the deterioration of the Columbia ADI, as well as the elimination of UHF audience. However, the only Columbia audience in Clarendon County belonged to WIS-TV. The UHF stations had no reported share of viewing in 1967 and have none today even after up to two years of operation with improved facilities. The reassignment of this county to Charleston impinged only upon WIS-TV which, with 42%, still maintains a larger share of viewing than any Charleston station. With a zero audience in this county, the suggestion that the UHF stations could have "saved" Clarendon for the Columbia ADI is difficult to accept. Clarendon County will remain in the Charleston ADI whether or not the proposed tower is granted. In the unlikely event that it is reassigned to the Columbia ADI, the balance of power will be between Charleston stations and WIS-TV.

(2) *Lee County*—There is no possibility whatever of Lee County being captured from the Columbia ADI. After three successive coverage studies, 1965, 1967 and 1969, the Charleston stations still have no reported share of audience—that is, zero. Columbia currently holds a 57.5% share, 96.9% of which belongs to WIS-TV. Most of the remaining audience, 42.3%, goes to Florence.

(3) *Sumter County*—For the same reasons as above, there is no possibility of this county moving into the Charleston ADI. The three Charleston stations combined account for a 3.3% share of viewing, which is less than half that currently held by WNOK–TV and WOLO–TV. The Columbia market dominates this county with a 73.6% share, 89% of which belongs to WIS–TV. WBTW, Florence, shows a 22.1% share.

(4) *Calhoun County*—Smallest of any county in both the Columbia and Charleston ADI, Calhoun's ADI designation has little bearing on the total audience of any market in the area. However, as in the case of Lee and Sumter Counties, there is no possibility of Calhoun becoming a part of the Charleston ADI. The Columbia stations currently have a 70.5% share of viewing, 91.4% of which is controlled by WIS–TV. The Charleston stations combined have a 16.8% share while two Augusta stations (both VHF) possess a 12.1% share. In this situation, Charleston TV would be competing against three established VHF stations representing each of the three networks. The likelihood of Charleston capturing the dominant share of the audience, or of the WIS–TV share being reduced to something less than 50%, is, according to the applicants' witness, extremely remote.

(5) *Orangeburg County*—This is the only one of the so-called "crucial" counties that stands even the slightest chance of moving into the Charleston column. Again, in his view, this will not happen for several reasons:

a. *Three-way Competition*—Columbia currently maintains the dominant share of audience with 41.3%, virtually all of which (97%) is attributable to WIS–TV. Charleston has a 34.5% share and Augusta, represented by two VHF stations, has a 23.7% share. Paralleling the situation in Calhoun, the Charleston stations would have to divert audience not only from WIS–TV, but from the entrenched viewership of two Augusta VHF stations whose share is twice as strong as in Calhoun.

b. *Columbia Orientation*—As stated by representatives of the two UHF stations participating in this hearing, each of the five "crucial" counties is oriented more toward the Columbia trading area than to Charleston.[1] In terms of distance, the proposed Charleston tower site is 76 miles from the Orangeburg County seat compared to 39 miles for the Columbia UHF site and 44 miles for the WIS–TV site. Newspaper circulation figures cited by WNOK–TV (p. 16) reveal that Charleston newspapers have no reported readership in Lee, Sumter or Calhoun Counties, while in Orangeburg the total circulation is only 38% as large as the Columbia newspapers (Appl. Ex. No. 3, pp. 29–32).

According to applicants' specialist national spot is the only portion of the UHF station's income that might be affected by the potential loss of an ADI county. Even if Orangeburg shifted, the UHF stations would continue to develop audiences in this county which would be reported by the rating services. Thus, there would be no economic impact. But there could be economic impact to the extent that a change in Columbia's ADI rank causes advertisers to re-evaluate the market. The only source of station income for whom ADI rankings have meaning is the national advertiser. Local advertisers will continue to invest in the Columbia market without regard to its ADI rank or size. Network revenues are a function of total audiences delivered for network programs and have no relationship to ADI rank (Tr. 874; Appl. Ex. No. 3, p. 42).

His conclusion is that in any analysis of the Columbia market the UHF difficulty comes from within, not without. The overwhelming competitive problem facing these stations is the dominance of WIS–TV, which accounts for a share of the ADI audience ranging from a low of 45% to a high of 73% during key day parts, according to the November 1969 ARB, and currently receives better than 90% of the national spot volume. To the extent that the Charleston tower will work to diminish the dominance of WIS–TV in the area between these two markets, he contends that the UHF stations will emerge in a stronger competitive position as a result. Since 1967, with no change in the Charleston facility, audiences captured by the Charleston stations in the five counties from WIS–TV

[1] See page 19 of Columbia Television Broadcasters, Inc., Exhibit No. 1 and pages 21–22 of Palmetto Exhibit No. 1.

have already improved the UHF competitive relationship with their principal adversary:

[In percent]

	1967		1969	
	Share of 5-county viewing hours	Share of Columbia viewing hours	Share of 5-county viewing hours	Share of Columbia viewing hours
WIS–TV	59.5	95.8	53.1	92.8
WNOK-TV plus WOLO–TV	2.6	4.2	4.1	7.2

Source: ARB Coverage Studies, 1967 and 1969.

The above table, which is based on the shares of audience developed by the three Columbia stations in the "critical" five county area expresses the shares of audience of the Columbia UHF stations with respect to that of WIS–TV. Comparing their 1967 performance to their 1969 performance in the five critical counties, the table demonstrates that while the UHF stations have increased their share of viewing points by 58% relative to their competitor WIS–TV, the Columbia UHF stations' growth has been 71%. The Columbia UHF stations are now delivering a 7.2% share of all Columbia viewership in these counties compared to only a 4.2% share two years ago. Any improvement in the audience of the Charleston stations at the expense of WIS–TV will accelerate this pace. Thus, he concludes, the Charleston maximum service tower could prove to be a blessing in disguise for the Columbia UHF stations (Appl. Ex. No. 3, pp. 45–46).

APPENDIX V

Concerning Clarendon County the opinion was:

"When ARB shifted Clarendon County from the Columbia ADI to the Charleston ADI in 1969, the WIS–TV home circulation, by various time categories, was not materially reduced by the designation. When ARB shifted Clarendon to the Charleston ADI, WOLO–TV and WNOK–TV did not lose circulation; they never had measured circulation in the county. On the other hand, now that Clarendon is part of the Charleston ADI, there is no condition which precludes WOLO–TV and/or WNOK–TV from developing increasing viewership in the county, if their present signals are capable of being received by the public and their programs are sufficiently attractive." (Appl. Ex. No. 14, p. 13.)

The following is the appraisal of the predicted loss of Sumter, Lee and Calhoun Counties:

"WIS–TV's 1969 penetration into *Sumter, Lee and Calhoun* Counties is so deep and extensive—67.5%, 55.7% and 64.5% respectively, of the total viewing hours—that I do not believe that a grant of the maximum service tower could possibly result in a change of their ADI designation from Columbia to Charleston.

"Despite [the] theoretical assumptions, my practical experience with TV station signal penetration in relation to effective circulation has never led me to conclude that Sumter, Lee and Calhoun counties could be drawn into the ADI (dominant) orbit of the Charleston Market if the Charleston applications are granted. Every experienced TV broadcaster knows that signal coverage is definitely not tantamount to audience circulation. Engineering contours alone do not delineate TV market areas. TV homes covered by given signal strengths are not automatically equivalent to TV home audiences. Neither does signal coverage determine viewership.

"Throughout the TV industry, overlap of Grade B signals is the characteristic feature, not the exception, in the vast majority of markets. Providence-Boston and Washington-Baltimore are two typical illustrations of the fact that TV signal contours are not translatable into audience circulation. The Providence TV stations transmit a Grade A to B service signal into most parts of the Boston Metropolitan area, and vice versa. Yet, audience surveys regularly fail to reveal measurable Providence station audience in the Boston TV market or

vice versa. The same holds true regarding the Washington-Baltimore TV markets, so far as effective circulation is concerned. Each of the Washington and Baltimore TV stations has its respective audience market, despite substantial overlap of Grade B signals.

"Many factors other than signal strength and engineering contours determine TV audience circulation. Fundamentally, depending on where a viewer resides within the economic-social orbit of a given city, he will tend to view regularly the TV stations of that city, regardless of the availability of outside signals. Traditional newspaper circulation definitely affects and helps to shape the demographic orbit of a city. For example, as one progresses northward from Washington, beyond Laurel, the Baltimore newspapers become more dominant than do the Washington newspapers. Trade habits of the public tend to favor one city as against another despite overlap of TV or radio signals. The news and happenings of one city always have more attraction for the people within that city's orbit than news and happenings of some other city, despite that latter city's TV or radio signal availability.

"From my knowledge of the economics of many TV stations and the overlap of Grade B signals from different markets, it is inconceivable to me that the Charleston TV signals emanating from the proposed tower could reshape the basic viewing habits of the public in Sumter, Lee or Calhoun Counties. These counties are within the economic-social-employment orbit of Columbia, with only a secondary pull from Florence in Sumter and Lee Counties." (Tr. 616, 617, 622; App. Ex. No. 14, pp. 13–15.)

Based upon the foregoing, it was concluded as follows:

"It is clear that a grant of the Charleston applications will result eventually in some increase in circulation, by one or more Charleston stations, in Sumter, Calhoun and possibly Lee counties. However, it is my considered opinion and judgment that the full, combined potential viewership of the Charleston stations has no practical probability of dominating the audience of these three counties and, thereby, shifting their ADI designation away from its Columbia designation.

"*Sumter County* is currently 73.6% dominated by the three Columbia stations. Another 22% share of the audience goes to Florence. The County is wedded to the Columbia metropolitan market by virtue of factors such as immediate geographic location, Columbia newspaper circulation, trade habits of the public and news interests of the public. It is inconsistent with my television station experience to believe that availability of the proposed Charleston TV signals would reshape significantly the TV viewing habits of the Sumter County population.

"With the recently improved technical and signal facilities of WOLO–TV and WNOK–TV, and with the progressive expansion of all-channel set penetration, I would expect that these two stations will progressively enlarge their share of the Sumter audience at the expense of WIS–TV and the Florence station. Columbia UHF station competition is far more likely to affect Florence TV station circulation, within Sumter County, than is the proposed Charleston TV station competition. From experience, I cannot conceive of Charleston TV stations achieving a significant audience circulation in Sumter County (i.e., not more than 25%). However, I do believe that the improved signal coverage of WNOK and WOLO will, in all likelihood, reduce Florence TV station circulation and audience shares in Sumter County.

"So far as Lee County is concerned, 99.8% of the audience now goes to Columbia (57.5%) and Florence (42.3%). The physical location of Lee County precludes, in my opinion, the eventual development of more than a fractional audience share for any or all Charleston stations, operating as proposed. To the best of my knowledge, no given county, 99% dominated by given TV stations of given markets, has ever been shifted to the ADI area of another market or, for that matter, significantly reshaped in viewer circulation habits by the improvement in signal service from another market.

"Calhoun County is dominated by the Columbia TV stations which have a 70.5% share, of which WIS–TV has 64.5%. Its geographic proximity and socio-economic ties to Columbia will, in my opinion, tend to preserve the Columbia share of audience domination, regardless of a grant of the Charleston applications. In fact, with the recently improved technical facilities of WOLO–TV

and WNOK–TV, and the progressive expansion in all-channel set penetration, it is far more logical to expect the Calhoun public to utilize Columbia TV station service than to switch to Charleston TV station news, weather, advertising and other local Charleston programming.

"Calhoun audience viewing habits are not likely to be reshaped toward Charleston TV stations merely because the proposed signals become available from an engineering viewpoint. Calhoun County's substantial affinity is with Columbia—not with Charleston" (Tr. 624; Appl. Ex. No. 14, pp. 14–17).

APPENDIX VI

The seven counties analyzed display both homogeneity in some characteristics and vast differences in others. Agriculture is an important activity in all counties, providing employment to many of the people, supporting the trading towns and influencing the attitudes and outlooks of the population. But the rural and small-town way of life is slowly being replaced throughout the area by more urban activities. Change has influenced the population the least in Bamberg and Calhoun Counties, near the southern end of the area, and these areas, along with Marion County, further north, are the parts of the seven county area which are most strongly tied to agriculture. Though manufacturing plants exist in these three counties, the people are still primarily engaged in farming or in town and village activities which serve the farms. Florence, Horry, Orangeburg and Sumter have taken long strides towards urbanization and employment of the labor force in manufacturing. Though all of these counties have large numbers of farms, their leading towns carry on a diversity of economic activities and all four of the counties have been moved through special circumstances towards higher incomes for the people and other changes which put them closer to the mainstream of American life. There are, of course, extremes of activity within even this more prosperous group of counties; much of Orangeburg, outside the town of Orangeburg, is still little affected by change, while Myrtle Beach, in Horry, will during a summer month attract teeming crowds to its resort attractions (Appl. Ex. No. 9, pp. 2–4).

Basic characteristics of the seven county areas are as follows:

(1) Nearly one-half of the population is nonwhite, but nearly all of the nonwhite population is Negro. There are no other racial groups of consequential numbers than whites and Negroes. No large national origin groups of foreign birth or parentage live in the area. The population is nearly all native born.

(2) The median age of the population is very low and there is relatively a very low proportion of the population in the 20–64 year age group from which working people are most frequently drawn.

(3) The medial level of educational attainment of the population is relatively very low. Although the number of high school graduates and college graduates residing in the area in 1960 was relatively as great or greater than was typical for the United States, limited formal education is an important characteristic of the people of the area.

(4) Low individual and family incomes prevail generally throughout the area, with the problem continuing to be greatest in the counties which are least touched by industrialization and urbanization. Many of the people and families are at poverty levels (Appl. Ex. No. 9, p. 4).

In addition to the above-characteristics of the seven county area which were demonstrated by study of quantitative data, there are the following which are not readily evident from statistics:

(1) There are six higher educational institutions in the area. They are Voorhees College, at Denmark, Bamberg County; South Carolina State College and Claflin College, with adjoining campuses in Orangeburg; Morris College at Sumter; the Florence regional campus of the University of South Carolina; and the Coastal Carolina campus of the University of South Carolina, in Horry County. The first four colleges named are predominantly Negro in student population, not unexpectedly when one considers their location in an area that still has a very heavy Negro population.

(2) The agriculture of the area leads some of its people to occupations and activities which are not readily evident from statistics. Amidst farms turning

to beef cattle and mechanization in Bamberg and Orangeburg Counties, there are small vegetable-growing operations, producing peas, beans and other food crops. In Pee Dee towns, during the late summer, there are people working in the tobacco auction markets, such as those at Conway and Loria in Horry County, Mullins in Marion County, and Timmonsville in Florence County. Tobacco brings to these counties leaf redrying and processing plants, operated by firms that export much of their product to a large number of nations.

(3) Substantial transient highway traffic provides employment in the clusters of motels and restaurants in Florence, Orangeburg and Bamberg. During the summer beach season, many people work in hotels, motels, eating places, recreational facilities, cottage rental offices and other activities at Myrtle Beach and nearby resort centers of Horry County.

(4) The town of Florence is a railroad junction center and this provides employment for a significant cluster of people in the area (Appl. Ex. No. 9, pp. 4–5).

On March 17, 1970, submitted to each of the commercial television stations was a supplemental statement concerning the characteristics of Clarendon, Hampton and Lee Counties. The fundamental conclusions reached in the earlier study of the Seven County Area also apply to Clarendon, Hampton and Lee Counties. These counties are still heavily influenced by agriculture. Incomes are low, educational attainment of the population is limited and movement towards urbanization and industrialization is slow. These particular points relating to the three counties require attention:

(1) All three have majorities of nonwhite population, whereas for the Seven County area as a whole, the population was in 1970 about evenly divided between whites and nonwhites.

(2) The three counties are most like Bamberg, Calhoun and Marion, of the counties in the Seven County area. This means that Clarendon, Hampton, and Lee are more heavily agricultural, less urbanized and generally less characterized by employment of their people in manufacturing than are Florence, Horry, Sumter and parts of Orangeburg counties.

(3) Among the three counties for which data has now been added. Hampton shows the highest percentage of its population employed in manufacturing. It appears that about 30 percent of the employment in Hampton is in manufacturing; a large part of the explanation lies in the location of the substantial plant of the Westinghouse Manufacturing Company in Hampton (Tr. 564, 577; Appl. Ex. No. 9, p. 5a).

This study and other available statistical data were used by the three stations to determine the significant groups and interests in the area and to provide essential background information for subsequent interviews. Following this, key station personnel from each station conducted in-depth interviews with a total of 183 representatives or spokesmen for the leading groups and interests in the ten counties. Of these, WCSC–TV conducted 65 interviews, WCIV 68 and WUSN–TV 50. Representatives of each stations conducted interviews in each of the ten counties surveyed. They rotated the occupations and positions from county to county so that each station would have a balanced observation of the whole area. Since in previous surveys the three stations had elicited information concerning program preferences and tastes, the interviews were confined to a discussion of the significant problems facing the particular area in which the interviewee resided. Interviews were conducted with government officials (23), and representatives of business (38), labor (11), agriculture[1] (20), educational institutions (25), religious denominations (15), the professions (12), youth (9), welfare (7), social and cultural organizations (9), military (5) and other groups including Negro organizations, recreation and eleemosynary organizations (9). By race, the interviews included 144 whites and 39 blacks. Reports on all of these interviews were then compiled and furnished to each of the three stations for evaluation (Tr. 994, 1005, 1029–30, 1041, 1070; Appl. Ex. No. 8, pp. 2–3, 84).

In addition, the three stations engaged an experienced interviewer to conduct a telephone survey of the general public in the ten county gain area. The number

[1] The General Manager of WCIV made the point that in a farming county one could ascertain agricultural problems and needs during the course of interviews with other than farmers, or representatives of farm organizations. He said the Mayor, or the Doctor or the Druggist might bring these matters up and from his experience in the area know what he was talking about (Tr. 1034).

of interviews in each county represented that county's share of the total population of the ten-county area. Within each county all urban communities were surveyed. Farm houses were reached since they were listed in the telephone directories and were subject to random selection. She was specifically instructed to inquire about community needs and problems, as distinguished from program preferences. She conducted 474 interviews and prepared a report on each interview. Copies of these reports were made available to each of the three stations for evaluation. Upon review of the data compiled by her, 141 additional telephone calls were made by station personnel in March 1970, because the stations felt that Mrs. Gilland's survey had not reached a sufficient number of Negroes and a sufficient number of males. Personnel of each of the three stations made approximately the same number of calls within each of the ten counties surveyed (Tr. 991–92; Appl. Ex. No. 8, pp. 3, 167; Appl. Ex. No. 10).

A statistical analysis of the telephone contacts shows the following breakdown:

	Number	Percent
Geographic division:		
Bamberg	22	3.6
Calhoun	17	2.8
Clarendon	40	6.5
Florence	131	21.3
Hampton	24	3.9
Horry	99	16.1
Lee	37	6.0
Marion	42	6.8
Orangeburg	92	15.0
Sumter	111	18.0
Total	615	100
Race:		
White	350	56.9
Black	257	38.9
Unknown	8	4.2
Total	615	100
Sex:		
Male	220	35.8
Female	395	64.2
Total	615	100

	Number	Percent
Income:		
Over $20,000	4	.7
$15,000 to $20,000	14	2.3
$10,000 to $15,000	48	7.8
$5,000 to $10,000	142	23.1
Under $5,000	232	37.5
Unknown	175	28.6
Total	615	100
Age:		
Over 60	142	23.1
50 to 60	138	22.5
40 to 50	103	16.7
30 to 40	94	15.3
20 to 30	82	13.2
Under 20	44	7.2
Unknown	12	2.0
Total	615	100

(Appl. Ex. No. 8, p. 167)

As a result of its evaluation of the information obtained as a result of the foregoing surveys, as well as that obtained as a result of prior surveys, WCSC–TV concluded that the more significant problems or needs of the gain area are as follows:

(1) Stop drain of most able, and best educated, youth from the area. The percentage of the best Negro youth leaving is alarmingly high.

(2) Adult education and training is of utmost importance. Motivate, persuade and recruit uneducated, unskilled adults for programs now provided by State and local agencies; get them off welfare.

(3) Break down the communication barrier between Black and White. There is a strong need for Negro representation in public office and community organizations to enable both races to work together to solve the many problems.

(4) Find prompt means of preserving the public school system now endangered by busing.

(5) Provide a great deal more low cost housing, particularly rental. Get everyone into a decent place to live. Eliminate the remaining pockets of abject poverty.

(6) Find from among the people strong, dedicated leadership for this period when the whole way of life is changing from an age-old agrarian economy to an industrial one. These leaders must provide vision, give direction, motivate and persuade those who now must find their way in this new era.

(7) There is a great need for organized, supervised leisure hour activities for youth, especially teenagers. There is great concern about youth getting into trouble because of being idle, particularly with no decent places to go at night, not even the movies.

(8) Negro sections are particularly in need of sewage and water systems, garbage collection, sidewalks and other city services. In sections just outside city limits (largely Negro) there is virtually no service, not even disposal of garbage.

(9) The farmer is beset by a myriad of problems and the small farmer is phasing out. There is a need for the remaining farmers to abandon their old individualism and work cooperatively in planning what to plant and what to sell to processing plants and food chains. The farmer also needs financial and educational help as he must do many new, expensive things to survive.

(10) Transportation for the poorer people who live outside the towns is a bad problem. They don't have it and can hardly afford it. Transportation systems must be set up to get these people to the schooling and training centers in the towns (many far away from where they live) ; also to get them to town-located health centers.

(11) The cry for more industrial plants is heard on every hand and at all levels. The Negro is especially vocal about the need of jobs. Principally the Negro, but also the white man, has only seasonal work in farm occupations and in the tourist resorts which are largely of a summer nature.

(12) Another cry is for a giant clean up of streets, highways, yards, slums. Along with a clean up must go a continuing campaign to teach people to keep their premises and communities clean. Pride and self-respect must be instilled.

(13) Pollution is a growing problem in some parts of these counties. Industry is the main offender. People contribute much of it. Open privies and septic tanks add greatly to it.

(14) Family planning is important. Over-population among those least able to take care of themselves is a serious problem.

(15) Youth must be jarred out of apathy and helped to find goals and purpose . . . given clear vision of what can be attained.

(16) There is a need for tax reassessment and education of the public about taxes.

(17) There is a need for improved hospital services and more Day Care Centers since in many families the wife must supplement her husband's low income. The number of existing facilities is entirely inadequate (Appl. Ex. No. 11, pp. 1–3).

109–026—73——10

F.C.C. 73R-60

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTHERN BROADCASTING CO. (WGHP-TV), HIGH POINT, N.C. For Renewal of Broadcast License	Docket No. 18906 File No. BRCT-574
FURNITURE CITY TELEVISION CO., INC., HIGH POINT, N.C. For Construction Permit for New Television Broadcast Station	Docket No. 18907 File No. BPCT-4302

MEMORANDUM OPINION AND ORDER

(Adopted February 2, 1973; Released February 6, 1973)

BY THE REVIEW BOARD:

1. After Southern Broadcasting Company (Southern) filed a petition for leave for leave to amend its application, Furniture City Television Company, Inc. (Furniture City) filed a petition for enlargement of the issues which is now before the Board.[1] Furniture City seeks 1.65 and basic qualifications issues based on information concerning changes in broadcast and other business interests revealed in the requested amendment.

2. There is no disagreement that the changes relative to Messrs. Slick and Butler and the Slick Corporation in which they have interests were reported more than thirty days after they took place. Moreover, it is not possible to ascertain when some of the other changes in business and broadcast interests took place, and this failure strongly suggests that these, too, were not brought to the Commission's attention within the required time period. In view of the foregoing and the other data revealed in the pleadings, modification of existing 1.65 issue is warranted. However, since there is some question whether the derelictions are of sufficient significance to bear adversely on the basic qualifications of Southern, the issue will permit a determination of the effect the reporting failures have on the comparative and/or basic qualifications of that applicant.

3. Accordingly, IT IS ORDERED, That the Furniture City Television Company, Inc. petition to enlarge issues, filed October 19, 1972, IS GRANTED in the respects hereinafter indicated and otherwise IS DENIED;

[1] The petition for leave to amend was filed October 11, 1972; it has not been disposed of. The petition to enlarge was filed October 19, 1972; the Broadcast Bureau's comments, on October 30, 1972; Southern's opposition, on November 8, 1972; Furniture City's reply to the Bureau, on November 9, 1972; and Furniture City's reply to the opposition, on November 20, 1972.

4. IT IS FURTHER ORDERED, That the Rule 1.65 issue against Southern Broadcasting Company (WGHP–TV) added by the Review Board by Memorandum Opinion and Order (— FCC 2d——, 25 RR 2d 1138, released December 8, 1972), IS MODIFIED to include the matters as indicated herein; and

5. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the issue added herein SHALL BE on Furniture City Television Company, Inc., and the burden of proof SHALL BE on Southern Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72D–66

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
SOUTHLAND, INC., LAUREL, MISS.	Docket No. 19415 File No. BPH–7405
SOUTH JONES BROADCASTERS, INC., ELLISVILLE, MISS.	Docket No. 19416 File No. BPH–7445
MICHAEL D. HAAS, BAY SAINT LOUIS, MISS.	Docket No. 19465 File No. BP–18154.
ROBERT BARBER, JR., GEORGE SLIMAN, AND F. M. SMITH, D.B.A. GULF BROADCASTING CO., GULFPORT, MISS.	Docket No. 19466 File No. BP–18462
HWH CORP., MCCOMB, MISS. For Construction Permits	Docket No. 19467 File No. BP–13478

APPEARANCES

Leo Resnick, Esq. and *Simon Tucker, Esq.*, on behalf of Southland, Inc.; *Eugene F. Mullin, Esq.* and *Sheldon C. Hofferman, Esq.*, on behalf of South Jones Broadcasters, Incorporated; *Marvin Rosenberg, Esq.*, on behalf of Michael D. Haas; *James A. Gammon, Esq.*, on behalf of Robert Barber, Jr., George Sliman, and F. M. Smith, d/b as Gulf Broadcasting Company; *Eugene F. Mullin, Esq.* and *Sheldon C. Hofferman, Esq.*, on behalf of HWH Corporation; *Michael L. Glaser, Esq.*, and *J. D. Krause, Esq.*, on behalf of Southwestern Broadcasting Company; and *William D. Silva, Esq.*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

PARTIAL INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JAY A. KYLE

(Issued October 20, 1972; Effective December 14, 1972 pursuant to Section 1.276 of the Commission's Rules)

PRELIMINARY STATEMENT

1. The Commission by a Memorandum Opinion and Order (FCC 72–232) released on March 23, 1972, designated the applications of Michael D. Haas, Gulf Broadcasting Company (Gulf) and HWH Corporation for a hearing. In the order of designation, the following issue [1] was included against Gulf as follows:

3. To determine whether Gulf Broadcasting Company has complied with the provisions of Section 1.65 of the Commission Rules by keeping the Commission advised of substantial and significant changes as required by Section 1.65, and,

[1] Hereinafter sometimes referred to as the 1.65 issue.

if not, the effect of such non-compliance on its basic or comparative qualifications to be a Commission licensee.

2. Pursuant to a request of the Broadcast Bureau, the Commission consolidated the proceeding involving Michael D. Haas, Gulf Broadcasting Company and HWH Corporation with the proceeding of Southland, Inc. and South Jones Broadcasters, Incorporated for the purpose of resolving the Section 1.65 issue. This was accomplished by a Memorandum Opinion and Order (FCC 72–491), released June 9, 1972 which provided for a hearing "before Hearing Examiner [Administrative Law Judge] Jay A. Kyle for the limited purpose of receiving evidence and the issuance of an Initial Decision regarding the Section 1.65 issue specified in the order, FCC 72–232, released March 23, 1972." It is to be noted at this point that George M. Sliman and F. M. Smith, partners, along with Robert Barber, Jr., in the Gulf Broadcasting Company, each hold one-third of the shares in Southland, Inc. Pursuant to the issuance by the Commission of its Memorandum Opinion and Order released June 9, 1972, referred to above, a prehearing conference was held on July 18, 1972 and the hearing on the Section 1.65 issue was held on September 6, 1972. The Broadcast Bureau filed Proposed Findings of Fact and Conclusions of Law on September 14, 1972 while Gulf filed its Proposed Findings of Facts and Conclusions of Law a day later and its Reply Findings on September 22, 1972.

Findings of Fact

3. Robert Barber, Jr., George Sliman and F. M. Smith are members of a general partnership d/b as Gulf Broadcasting Company. In specifying a 1.65 issue against Gulf, the Commission noted that Smith and Sliman each own one-third of the stock in Southland, Inc.

4. Smith and Sliman acquired their present interests in Southland on April 12, 1965. Southland, Inc. is the licensee of WLAU(AM) in Laurel, Mississippi and on March 3, 1971 it filed an application with the Commission for a new FM broadcast facility in Laurel, Mississippi. The Laurel application disclosed the interests of Sliman and Smith in the Gulf application. Gulf failed to amend its previously filed application for Gulfport, Mississippi to reflect this fact until February 23, 1972. However, it is pointed out that in April, 1971 Southland of Alabama, Inc. in which Sliman and Smith have interests applied to the Commission as assignee for an assignment of license of WLIQ, Mobile, Alabama. That application fully disclosed the interests of Sliman and Smith in both the Laurel and Gulf applications. In early 1972 Smith and Sliman were notified by their new communications counsel that the Gulf application should be amended to reflect their interests in the Laurel FM application. Prior to this time neither Smith nor Sliman were aware of this requirement. Upon advice of counsel, the application was promptly amended on February 23, 1972 which was approximately a month prior to the Commission's designation order in this proceeding.

Conclusions

1. It is apparent that Gulf Broadcasting Company failed to comply with Section 1.65 of the Commission's Rules in that it did not amend its application within 30 days to reflect the interests of two of its principals in the Southland application.

2. It is concluded that this failure on the part of Gulf was the result of an inadvertent omission and the record is clear that Gulf had not been advised by its prior counsel that the amendment was necessary.

3. As Sliman and Smith are principals and licensees of the Commission, their failure to comply with the Rules and Regulations of the Commission fall short of being excusable but, on the other hand, there is nothing in the record to indicate that these individuals have been other than candid with the Commission and have maintained a good faith effort to have their applications current and correct. However, it is the duty of applicants with applications pending before the Commission to keep their applications up-to-date and to furnish the Commission with the most current and complete information respecting a given application. Each application must be complete and the Commission must not be required to rely on information filed in some other application or through some other manner.

4. The Commission stated in *Channel 41, Inc.*, 24 FCC 2d 603, 19 RR 2d 879 (1970):

> *We do not take lightly a failure to amend an application to indicate new broadcast interests.* We note, however, that the omitted information in Channel 41, Inc.'s application was on file in another application, indicating that there was no motive for concealment; that the omitted information does not pertain to other aspects of the applicant's qualifications, financial, for example, and that we have only this one isolated instance. We believe, therefore, that in these circumstances no further inquiry or sanction is required.[2] (Italics supplied.)

As noted principals of Gulf did disclose in subsequently filed applications complete information regarding other broadcast interests as of the date of the filing of each application. There is, therefore, no definite motive to conceal apparent. Consequently, Gulf should not be disqualified for its failure to comply with Section 1.65 of the Commission Rules. However, this failure does reflect a degree of carelessness and laxity which conceivably should be considered in evaluating Gulf's comparative qualifications to be a Commission licensee. In this respect it is not deemed, however, that this failure should be a basis to deny an evaluation of Gulf's comparative qualifications to be a Commission licensee.

5. In view of the foregoing findings of fact and conclusions of law and upon careful evaluation of the entire record in this proceeding, it is concluded that insofar as the Section 1.65 issue is concerned, Gulf Broadcasting Company is qualified to be a Commission licensee.

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[2] See also *The Big Chief*, 29 FCC 2d 154, 21 RR 2d 971 (Rev. Bd., 1971).

Accordingly, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by the applicant or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Commission's Rules, Gulf Broadcasting Company is qualified to be a Commission licensee as it relates to the Section 1.65 issue here involved and the Gulf Broadcasting Company application is RETAINED in hearing status.

FEDERAL COMMUNICATIONS COMMISSION,
JAY A. KYLE, *Administrative Law Judge.*

F.C.C. 73–103

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re STARK COUNTY COMMUNICATIONS, INC., BREWSTER, OHIO For Certificate of Compliance	CAC–1007 OH246 CSR–260

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE NOT PARTICIPATING; COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT; COMMISSIONER REID CONCURRING AS TO THAT PORTION RELATING TO THE ACCESS REQUIREMENT AND DISSENTING WITH REGARD TO THE SIMULTANEOUS EXCLUSIVITY; COMMISSIONER WILEY CONCURRING IN THE RESULT.

1. On August 9, 1972, Stark County Communications, Inc., filed applications for certificates of compliance to commence cable television service at Beach City, Wilmot, Justus, Harmon, and Brewster, Ohio, communities located in the Cleveland-Lorain-Akron television market (the eighth largest). Proposing to operate from a common headend, Stark County requested the Commission's authorization to carry the following signals: WKYC–TV (NBC), WEWS (ABC), WJW–TV (CBS), WKBF–TV (Ind.), WVIZ–TV (Educ.), Cleveland, Ohio; WUAB–TV (Ind.), Lorain, Ohio; WAKR–TV (ABC), Akron, Ohio; WJAN (Ind.), Canton, Ohio. A twenty channel system with two-way capability will be constructed by Stark County. However, a waiver of Section 76.251 was requested to the extent that three separate access channels must be provided in each community to be served. Stark County justified this request by pointing to the small number of potential subscribers it could hope to attract in these communities. On December 20, 1972, we granted the first four applications and the requested waiver in *Stark County Communications Inc.*, FCC 72–1189, —— FCC 2d ——. While these applications presented issues identical to those present in the Brewster, Ohio application, they were unopposed. Summit Radio Corporation, licensee of WAKR–TV, Akron, Ohio, opposes a grant of the Brewster application.

2. Summit's opposition is prompted by Stark County's request for a permanent waiver of the network program exclusivity requirements of Section 76.91 of the Rules. After Stark County filed its applications for certification, Summit requested "same day nonduplication" protection against another ABC affiliate, WEWS, Cleveland, Ohio. Stark County responded to this by requesting a waiver of Section 76.91 of

the Rules, and Summit then filed its opposition, asserting that the matters of certification and program exclusivity were so interrelated as to require joint consideration. Discounting the small number of potential cable subscribers in Brewster,[1] Summit insists that every bit of audience is important. WAKR–TV is described as a "disadvantaged UHF station" competing at an "enormous disadvantage" with WEWS, an established VHF station operating in a much larger city.

3. Stark County's reasons for requesting a permanent waiver are: (a) the number of potential subscribers is less than one percent of WAKR–TV's average daily circulation; (b) the cost of installing switching equipment would be an onerous burden to a small system which has yet to begin service; (c) providing exclusivity protection to WAKR–TV would disrupt the viewing habits of its subscribers; (d) the Commission has followed a long-standing policy of deferring action on exclusivity requests involving systems with fewer than 500 subscribers; and (e) when the system serves 500 subscribers, it will render protection to WAKR–TV.

4. For the reasons given in our earlier decision involving Stark County, *id*, we will grant the Brewster application and approve a partial waiver of Section 76.251 of the Rules. However, should sufficient demand for these channels develop, we expect additional access channels to be made available. We are not inclined to approve a permanent waiver of Section 76.91 of the Rules. As we stated in the *Cable Television Report and Order*, the precedents and policies evolved under the former program exclusivity rule—Section 74.1103—were retained.[2] In *Spencer Community Antenna System, Inc.*, 22 FCC 2d 57 (1970), a temporary waiver of that rule was granted to a new cable system until it obtained 500 subscribers. The imposition of section 74.1103 was deferred, not because the number of subscribers represented a small percentage of a station's audience, the supposed disruption of a subscriber's viewing habits, or the costs of necessary switching equipment, but in view of the difficulties that vex any new cable system contemplating the inauguration of service in a small community. In the circumstances of that case, a temporary waiver of the program exclusivity rules served the public interest, and we believe a similar waiver is a reasonable response here.

In view of the foregoing, the Commission finds that a partial waiver of Section 76.251 of the Rules and grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That a partial waiver of Section 76.251 of the Rules IS GRANTED, and that the application for the certificate of compliance (CAC–1007) filed by Stark County Communications, Inc. for Brewster, Ohio IS GRANTED and an appropriate certificate of compliance will be issued.

IT IS FURTHER ORDERED, That the "Opposition to Application for Certification" filed October 16, 1972, by Summit Radio Corporation, IS DENIED.

[1] It is not disputed that Stark County hopes for only 400 subscribers in a community of 650 homes.

[2] *Cable Television Report and Order*, 36 FCC 2d 143, 181 (1972).

IT IS FURTHER ORDERED, That Stark County Communications, Inc., IS DIRECTED to comply with the requirements of Section 76.91 of the Commission's Rules on its cable television system at Brewster, Ohio, 7 days after it obtains 500 subscribers.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

I dissent to the majority's grant of this certificate of compliance because Stark County Communications' public, educational and governmental access proposals do not comport with our rules.

Stark County Communications (Stark) is franchised to operate cable systems, through a common head-end, in three small communities located within the Cleveland-Lorain-Akron television market (the eighth largest market in the country). Stark also intends to serve, through the same head-end, two other unincorporated communities in the same area. Despite its use of a single head-end, Stark will thus provide these five communities with five separate cable systems. See § 76.5(a) of the cable television rules, Cable Television Report and Order, 36 FCC 2d 141, 214 (1972). Under these circumstances, our cable rules would normally demand that Stark provide each community with its own public, educational and governmental access channels. See § 76.251(a)(4)(5)(6) of the cable rules, 36 FCC 2d at 240–242.

Today, for reasons which remain rather obscure, the Federal Communications Commission waives these access requirements. Absent any tangible evidence, the majority agrees with Stark that strict adherence to our rules would impose an undue financial burden upon the system and that these communities, given their small populations, will not either need or demand three separate access channels apiece. As a result, the majority approves Stark's proposal to share the three requisite access channels among each of the five communities.

This is a dangerous precedent.

It is true that when we promulgated our cable television rules, we recognized that our access requirements might impose an onerous financial burden on cable systems operating in isolated communities in the nation's largest television markets. See para. 148, *Cable Television Report and Order*, 36 FCC 2d at 197. It is also true that we therefore suggested that in an "appropriate situation," our access rules might be relaxed. Apart from its utter failure to offer some standards by which to better define this term, the majority, by simply proclaiming that Stark has presented such an "appropriate situation," has operated in a total vacuum.

First, the majority makes absolutely no inquiry into Stark's financial capabilities. We simply have no idea of the capital outlays this system could make if so required.

Second, the majority makes no inquiry into the financial burdens that would be imposed upon Stark by compliance with our access rules.

It is possible, of course, that this system could easily supply each of these communities with three separate access channels to be used and viewed solely by the people in each community. Stark has a 20 channel capacity—presumably for each community—and it currently proposes to carry only eight broadcast signals. It is therefore quite possible—if not likely—that the systems could provide each community with these eight signals plus three access channels, leaving each community with nine open channels—to be utilized by Stark for future distant signal importation. If this is, indeed, the case, compliance with our rules could not impose much of a burden on the system. The point, of course, is that we know nothing of Stark's technical capacity.

Finally, though the majority adds, rather gratuitously, that these systems will have to provide the complete panoply of access channels envisioned by our rules if the communities involved should somehow illustrate a "sufficient demand," nowhere does the majority even hint as to how such demand is to be measured.[1]

Ironically, our present access rules demand very little from cable systems. Aside from requiring that such systems make three access channels available without cost—one for public use, one for educational use, and one for use by the local government—our rules ask only that these systems provide "the minimal equipment and facilities necessary for the production of programming." We do not demand—though I believe we should—that cable systems publicize the existence of these channels, that they actively solicit their use, or that they provide technical assistance and training to those who might seek to use these channels.[2]

In other words, while our access rules may well offer the public a potential for informative and educational services never realized by

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[1] Interestingly, two of the five communities to be served by these systems are unincorporated and, hence, do not have local franchising authorities. In the absence of such local governmental bodies, the majority has no way of knowing how or whether the people in these communities had any opportunity to scrutinize Stark's plan to provide cable facilities without strict compliance with our access rules. Under our rules, the FCC will not certify a new cable system unless that system has been franchised after a full public proceeding. See § 76.31(a)(1) of the Cable Television Rules, 36 FCC 2d at 219. Systems desirous of serving unincorporated communities which do not have franchising authority must include with their certificate of compliance applications "an acceptable alternative proposal for assuring that the substance of our rules, and specifically § 76.31, is complied with." See paragraph 116 of the *Cable Television Reconsideration of Report and Order*. 36 FCC 2d 326 at 366 (1972). The majority has not even seen Stark's alternative proposals—if, indeed such proposals do exist—with respect to its two unincorporated communities. It is therefore impossible for the majority to determine 1) whether such proposals are adequate to preserve the public's rights and 2) whether the public ever expressed its views on access at all.

[2] By contending that full compliance with our access requirements presents it with an insuperable financial burden, Stark County appears to suggest that it cannot afford to construct the "minimal" access facilities envisioned by our rules. Passing the question whether the majority can agree with Stark in the absence of any financial information (both as to Stark's income and as to the costs of construction), and passing the very serious problem of determining what our rules mean by "minimum" facilities, I believe that those communities which charge Stark a franchise fee should be required to reinvest the monies collected in access channel facilities. Three of the communities to be served by Stark intend to collect a small percentage of the systems' gross revenues. (1% the first year, 2% the second, and 3% thereafter.) It seems to me that, at least in cases where the cable system can prove its financial inability to comply with our access requirements, its community of service should be bound to use the franchise fees which our rules permit it to collect from the system for the purpose of effectuating complete access. If this result cannot be achieved under our current rules, then I suggest they be amended.

commercial broadcasting, see e.g. Johnson and Gerlach, The Coming Fight for Cable Guess, 2 *Yale Review of Law* and Social Action, 217 (1972), the burden of realizing that potential remains firmly on the public. That potential is obviously undermined, and the public's burden is substantially increased when this Commission, without careful scrutiny of the relevant facts, blithely permits a cable system to reduce the number of access channels which our rules—meager as they might be—demand. The public can only lose.

I dissent.

F.C.C. 73–85

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
HARRY D. STEPHENSON AND ROBERT E. STEPHENSON, LEXINGTON, N.C.	Docket No. 18385 File No. BP–17021
CHINA GROVE BROADCASTING CO., CHINA GROVE, N.C.	Docket No. 18386 File No. BP–17686
For Construction Permits	

ORDER

(Adopted January 23, 1973; Released January 30, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. Under consideration are: (1) applications for review of the Decision of the Review Board (FCC 72R–31, 33 FCC 2d 749) released February 8, 1972, denying the applications of Harry D. Stephenson and Robert E. Stephenson (BP–17021) and China Grove Broadcasting Company (BP–17686), filed March 29, 1972, by China Grove Broadcasting Company and the Stephensons, respectively; (2) a petition for leave to amend, filed March 29, 1972, by the Stephensons; (3) an opposition to China Grove's application for review, filed April 10, 1972, by the Stephensons; (4) an opposition to both applications for review, filed April 13, 1972, by the Chief, Broadcast Bureau; (5) an opposition to the petition for leave to amend, filed April 6, 1972, by the Chief, Broadcast Bureau; and (6) replies to the Bureau's oppositions, filed April 14, 1972, and April 18, 1972, respectively, by the Stephensons.

2. Although the Stephensons assert that their application should be granted on the basis of their tendered amendment, the time for filing such a pleading expired long before it was submitted here. Moreover, in spite of the Stephensons' contentions that good cause exists for acceptance of their amendment, we perceive no reason why the record in this case should be reopened at this stage of the proceeding to admit evidence which was readily available at the proper time and which was deemed crucial by the Stephensons only from the "highland of hindsight." *Cf.*, *Guinan* v. *FCC*, 111 U.S. App. D.C. 371, 297 F. 2d 782, 22 RR 2026, at 2030 (1961).

3. IT IS ORDERED, That the applications for review filed March 29, 1972, by China Grove Broadcasting Company and the Stephensons, respectively, and the petition for leave to amend, filed March 29, 1972, by the Stephensons, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-50

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Case and Desist Order to be Directed Against TELE-CEPTION OF WINCHESTER, INC., WINCHESTER, KY.	Docket No. 19358 File Nos. SR-12689-N, SR-116834

APPEARANCES

William P. Bernton, on behalf of Tele-Ception of Winchester, Inc. and *Abraham A. Leib* and *Stephen R. Ross*, on behalf of Chief, Cable Television Bureau, Federal Communications Commission.

DECISION

(Adopted January 26, 1973; Released January 31, 1973)

BY THE REVIEW BOARD: NELSON, PINCOCK, AND KESSLER.

1. The Review Board has before it an Initial Decision of Administrative Law Judge David I. Kraushaar in the above-captioned matter and exceptions thereto, filed by Tele-Ception of Winchester, Inc. The Presiding Judge found, based on stipulation of the parties, that Tele-Ception of Winchester, Inc. is carrying the signals of stations WLKY-TV and WXIX-TV in violation of Section 74.1105(a) of the Commission's Rules and Regulations. Accordingly, he entered an order directing Tele-Ception to cease and desist from operating in violation of Section 74.1105(a) of the Commission's Rules, and specifically from carrying the signals of television stations WLKY-TV and WXIX-TV on its cable television system in Winchester, Kentucky. None of the parties have requested oral argument in this matter and the Board has considered the record, the Initial Decision and the exceptions thereto and finds no basis for overturning the Presiding Judge's decision.

2. Tele-Ception concedes that its operation is in violation of the Commission's Rules; however it contends that Section 74.1105(a) is strictly a procedural rule and the failure of its predecessors to give the notice required does not warrant the discontinuance of what it regards to be a valuable service to the community. It contends more specifically that, since WLKY-TV and WXIX-TV are independent UHF television stations, each operating in a community where all of the VHF stations in that community are carried by Tele-Ception's cable television system, the public interest requires continuous carriage of those UHF signals. The Commission in comparable situations has consistently held that until the cable television system has complied with Section 74.1105(a), it will not consider the merits of the service being rendered. *Hampton Roads Cablevision Co.*, 30 FCC 2d 520 (1971).

Tele-Ception has advanced no argument, precedent or justification for our departure from this well established rule. All of its exceptions, which run to the merits of the services rendered, will therefore be denied and the Presiding Judge's Initial Decision is adopted as the Review Board Decision in this matter.

3. Accordingly, IT IS ORDERED, That the exceptions to Initial Decision, filed on April 19, 1972, by Tele-Ception of Winchester, Inc. ARE DENIED, and that, within two days, exclusive of Saturdays, Sundays and Holidays, if any, after the release of this Decision, Tele-Ception of Winchester, Inc. cease and desist from the operation of its community antenna television system at Winchester, Kentucky in violation of Section 74.1105(a) of the Commission's Rules and Regulations and specifically from carrying the signals of television broadcasting stations WLKY–TV and WXIX–TV on its cable television system in violation of that section of the Commission's Rules and Regulations.

FEDERAL COMMUNICATIONS COMMISSION,
DEE W. PINCOCK, *Member, Review Board.*

F.C.C. 72D–20

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Cease and Desist Order to be Directed Against TELE-CEPTION OF WINCHESTER, INC., WINCHESTER, KENTUCKY	Docket No. 19358 File Nos. SR–12689–N, SR–116834

APPEARANCES

On behalf of the Respondent Tele-Ception of Winchester, Inc., Mr. *William P. Bernton* (Mallyck & Bernton); on behalf of the intervenor WLEX, Inc., Messrs. *Mark S. Fowler* and *Vincent A. Pepper* (Smith & Pepper); and on behalf of the Cable Television Bureau, Federal Communications Commission, Messrs. *Abraham A. Leib* and *Stephen R. Ross*.

INITIAL DECISION OF HEARING EXAMINER DAVID I. KRAUSHAAR

(Issued March 15, 1972; Released March 20, 1972)

PRELIMINARY STATEMENT

1. By Order to Show Cause released December 1, 1971 (FCC 71–1198), 32 FCC 2d 610, directing the respondent to show cause why it should not be ordered to cease and desist from further violation of Rule 74.1105(a) on its cable television system at Winchester, Kentucky, the Commission initiated the present proceeding. The Order declared that "The public interest requires that the hearing process be conducted as expeditiously as possible" and directed the Examiner to issue his Initial Decision "as promptly as possible after the conclusion of the hearing". It named WLEX–TV, Inc. and Chief, Cable Television Bureau (FCC) as parties to the proceeding.

2. A prehearing conference was held on January 18, 1972 and the hearing was held, as originally scheduled, on February 7, 1972, when the record was closed. The respondent requested that it be allowed the full 20-day period prescribed by the Commission's rules (Rule 1.263) for preparing and filing proposed findings of fact and conclusions. Inasmuch as the Show Cause Order initiating the proceeding conferred no authority upon the Examiner to reduce this period of time, the period allowed by the rule was prescribed herein for such purpose during the February 7 hearing session (T. 31–33). (The parties either concurred or did not object.) March 9, 1972 was set as the deadline for filing any reply briefs. On February 28 the Examiner received a telephone call from counsel for the respondent to the effect

that the other parties had no objection to an extension until March 1, 1972 for the filing of proposed findings and March 13, 1972 for the filing of replies and requesting that the Examiner extend these deadlines accordingly. All pleadings have been filed by the requested extensions of the deadlines and the Examiner has considered them.[1]

Findings of Fact

3. The respondent, Tele-Ception of Winchester, Inc., is the owner and operator of a cable television system at Winchester, Kentucky, which provides approximately 2,700 subscribers with the following television broadcast signals: WLEX–TV (NBC), WKLE (Educ.), WBLG–TV (ABC), and WKYT–TV (CBS), Lexington; WLKY–TV (ABC), WHAS–TV (CBS), and WAVE–TV (NBC), Louisville; WLWT (NBC), WCPO–TV (CBS), WKRC–TV (ABC), and WXIX–TV, Cincinnati, Ohio. Both WXIX–TV and WLKY–TV are distant signals in Winchester. Station WXIX–TV is an independent (non-network) station in Cincinnati, Ohio and Station WLKY–TV is the Louisville, Kentucky affiliate of the ABC national television network. Both are UHF television stations.

4. Station WLKY–TV, *supra*, began operation on September 16, 1961. The signal of WLKY–TV was not carried by Tele-Ception of Winchester, Inc., prior to March 17, 1966.

5. Station WXIX–TV, *supra*, began operation during 1968.

6. Present Rule 74.1105(a) reads as follows (emphasis in quote supplied):

> (a) No CATV system shall commence operation in a community or commence supplying to its subscribers the signal of any television broadcast station carried beyond the Grade B contour of the station, unless the system has given prior notice of the proposed new service to the licensee or permittee of any television broadcast station within whose predicted Grade B contour the system operates or will operate, and to the licensee or permittee of any 100 watts or higher power translator station operating in the community of the system, and has furnished a copy of each such notification to the Federal Communications Commission, within sixty (60) days after obtaining a franchise or entering into a lease or other arrangement to use facilities; in any event, no CATV system shall commence such operations until thirty (30) days after notice has been given. *Such notice shall be given by existing systems which proposed to add new distant signals at least thirty (30) days prior to commencing service* and by systems which propose to extend lines into another community within sixty (60) days after obtaining a franchise or entering into a lease or other arrangement to use facilities or where no new local authorization or contractual arrangement is necessary, at least thirty (30) days prior to commencing service. Where it is proposed to extend the signal of any noncommercial educational television station beyond its Grade B contour into a community with an unoccupied reserved educational television channel assignment under § 73.606 of this chapter, the notice shall also be served upon the superintendents of schools in the community and county in which the system will operate and the local, area, and State educational television agencies, if any.

[1] The Bureau filed its proposed findings of fact and conclusions of law by the original deadline of February 28, 1972. Tele-Ception's counsel wrote a letter, dated March 13, 1972, to the Hearing Examiner, "in lieu of filing Reply Findings". The letter indicates that copies were sent to other counsel. The Examiner has considered the contents of the letter although he regards the procedure of its submission as irregular. When and if Tele-Ception decides to comply with the law it will be time enough to give ear to its pleas on the merits.

109-026—73——11

Paragraph (d) of the same section specifies that the rule does "not apply to any signals which were being supplied to subscribers in the community of the CATV system on March 17, 1966, unless it is proposed to exend lines into another community" ("Grandfather clause").

7. The above-prescribed notices under Rule 74.1105(a) respecting the respondent's intention to carry the signals of television broadcast stations WLKY–TV and WXIX–TV were not served by it upon WLEX–TV, Inc., the licensee of Station WLEX–TV, Lexington, Kentucky [2], the filer of the "Petition for an Order to Show Cause" that triggered the instant proceeding. See Commission's Show Cause Order, para. 1.

Conclusions

8. It has been established herein that Tele-Ception has carried the signals of Stations WXIX–TV and WLKY–TV in violation of the notice requirements prescribed in Rule 74.1105(a). Had proper notice been given, the intervenor herein, WLEX–TV, Inc. could have formally protested the cable company's proposal to carry these signals and invoked the stay provisions of Rule 74.1105(c), which prescribe, *inter alia*, that such "new service which is challenged . . . shall not be commenced until after the Commission's ruling on the petition or on the interlocutory question of temporary relief pending further procedures . . .". The Commission would then have been in a position to weigh the merits of such proposed service in an orderly manner so that a reasoned determination could be made whether the carriage of the distant signals of Stations WXIX–TV and WLKY–TV on the Tele-Ception cable system would be in the public interest. Having failed to 'come into court with clean hands', however, thereby depriving the Commission of a fair opportunity to rule upon the merits of the ultimate controversy in the orderly way prescribed by the rules, respondent Tele-Ception cannot now be permitted to reap any benefit from this violation by the continued carriage of the disputed signals. *Cf. Hampton Roads Cablevision Co.*, 30 FCC 2d 520, 522, 523 (1971).

9. During the hearing the Examiner asked the parties to submit briefs regarding the applicability to this proceeding of the recently issued Cable Television Rules which, by their terms, take effect March 31, 1972. See 37 Fed. Reg. 3252 (1972). As indicated by the Cable Television Bureau in an Appendix to its Proposed Findings, on and after the effective date of the newly adopted rules and regulations, and after removal of the WLKY–TV and WXIX–TV signals from its CATV system pursuant to the cease and desist order to be issued herein, Tele-Ception could submit an application for a so-called certificate of compliance to add an independent television broadcast signal. If Tele-Ception desired to carry the distant signals of Stations WXIX–TV or WLKY–TV, it would have to make a showing that such carriage would be consistent with the rules. Such applications would then be put on public notice, giving interested parties 30 days to file protests. See New Rules 76.11(a), 76.13(c), 76.15, 76.17 and 76.59(b)(1) and

[2] It may be officially noted that Winchester, Kentucky is within a 35-mile radius of Lexington, Kentucky.

76.59(b)(2). Thus, even under the newly adopted rules, if and when they become effective, orderly procedures are prescribed that cable systems will be expected to comply with. In the meantime, however, until such time as the newly adopted rules *actually* supersede the rules now in effect [3] Tele-Ception, and all others similarly situated, must comply with the notice provisions of Rule 74.1105(a). On balance, therefore, in the interest of enabling this Commission to carry out its statutory mandates, to the end that its reasonable, judicially sustained, rules and regulations can be effectively and impartially administered, an Order must issue herein directing Tele-Ception of Winchester promptly to cease and desist from its unlawful operation. *Hampton Roads Cablevision Co., supra*, 30 FCC 2d at 522 and 523 (para. 6–8), and cases therein cited.

Accordingly, IT IS ORDERED, That, unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of its rules and regulations within two (2) days (exclusive of Saturdays, Sundays, and holidays, if any) of the effective date of this Initial Decision, Tele-Ception of Winchester, Inc., *Cease and Desist* from the operation of its community antenna television system at Winchester, Kentucky in violation of Section 74.1105(a) of the Commission's rules and regulations, and specifically from carrying the signals of television broadcast Station WLKY–TV and WXIX–TV on its said cable television system in violation of such section of the Commission's rules and regulations.

FEDERAL COMMUNICATIONS COMMISSION,
DAVID I. KRAUSHAAR, *Hearing Examiner.*

[3] The newly adopted CATV rules are subject to the hazards of litigation and, consequently, their effectiveness may be delayed beyond March 31, 1972.

F.C.C. 73-53

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re TRI-CITIES CABLE CO., INC., HUGHES SPRINGS, TEX. For Certificate of Compliance	CAC-798 TX246

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released February 5, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. On June 30, 1972, Tri-Cities Cable Company, Inc. filed an application for certificate of compliance for a new cable television system at Hughes Springs, Texas. The proposed system is to carry the following signals:

KSLA-TV (CBS) Shreveport, Louisiana.
KTBS-TV (ABC) Shreveport, Louisiana.
KTAL-TV (NBC) Texarkana, Texas.
KLTV (ABC, NBC) Tyler, Texas.
KDTV (Ind.) Dallas, Texas.
KDFW-TV (CBS) Dallas, Texas.
WFAA-TV (ABC) Dallas, Texas.
WBAP-TV (NBC) Ft. Worth, Texas.
KTVT (Ind.) Ft. Worth, Texas.
KERA-TV (Educ.) Dallas, Texas.

This application is opposed by KTBS-TV, Inc., licensee of Station KTBS-TV, and KSLA-TV, Inc., licensee of Station KSLA-TV, and Tri-Cities has replied.

2. Hughes Springs is located outside all television markets and accordingly its proposed signal carriage is consistent with Section 76.57 of the Commission's Rules. In their oppositions KTBS and KSLA argue that Tri-Cities' franchise for Hughes Springs is inconsistent with Section 76.31 of the Rules in the following respects: (a) it does not state that the franchisee's legal, character, financial, technical and other qualifications, and the feasibility of its construction arrangements have been approved by the franchising authority as part of a full public proceeding affording due process, (b) it does not contain a construction timetable, (c) it does not specifically refer to maintaining a local business office to handle complaints, (d) its duration is 25 years, which exceeds the 15 year maximum, (e) the franchise fee of 2% of annual gross receipts within the corporate limits of the city

to be served plus 2% of the annual gross receipts outside of the corporate limits of the city to be served may cumulatively exceed the Commission's suggested 3% franchise fee and as such require a special showing. But no showing has been attempted.

3. We rule on these objections as follows: (a) Tri-Cities has supplied information to establish that the franchise was issued only after a public proceeding, (b) in its application, Tri-Cities has undertaken to comply with the construction schedule of Section 76.31(a)(2) of the Rules, (c) in its application Tri-Cities has undertaken to maintain a local office in compliance with Section 76.31(a)(5) of the Rules. (d) Tri-Cities states that it will return to the city at the end of 15 years for franchise renewal proceedings. We find this offer to be acceptable, and therefore proceed on the understanding that Tri-Cities will voluntarily seek franchise renewal by November 17, 1985, *LVO Cable of Shreveport-Bossier City*, FCC 72–954, —— FCC 2d ——; (e) The discrepancy in the franchise fee is not so great as to bar the franchise (granted November 17, 1970) from being approved as in "substantial compliance" within the meaning of paragraph 115. *Reconsideration of Cable Television Report and Order*, FCC 72–530 36 FCC 2d 326, 366, see *CATV of Rockford, Inc.*, FCC 72–1005, —— FCC 2d ——. In summary, our review of Tri-Cities' franchise for Hughes Springs persuades us that it is in substantial compliance with our rules and policies sufficient to warrant a grant until March 31, 1977.

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Application For Certification" filed August 21, 1972 by KTBS–TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Opposition to Application For Certification" filed August 21, 1972 by KSLA–TV, Inc, IS DENIED.

IT IS FURTHER ORDERED, That Tri-Cities Cable Company, INC.'s application for Hughes Springs, Texas (CAC–798) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-93

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re VILLAGE CATV, INC., HOT SPRINGS VILLAGE, ARK. For Certificate of Compliance	CAC-920 (AR080) CSR-197

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT.

1. On August 1, 1972, Village CATV, Inc., filed an "Application for Certificate of Compliance" (CAC-920) and a "Petition for Special Relief" (CSR-197) for a new cable television system at Hot Springs Village, Arkansas. The proposed system will operate with the following Television Broadcast Signals:

KETS (Educ.), Little Rock, Arkansas.
KARK-TV (NBC), Little Rock, Arkansas.
KATV (ABC), Little Rock, Arkansas.
KTHV (CBS), Little Rock, Arkansas.
KFSA-TV (ABC/CBS/NBC), Fort Smith, Arkansas.
KTVE (NBC), El Dorado, Arkansas.
KTAL-TV (NBC), Texarkana, Texas.

Both the application and petition are unopposed.

2. In its petition for special relief, Village CATV requests that Hot Springs Village be deemed a community wholly outside all major and smaller television markets. In support of its request Village submits the following data: Hot Springs Village is a new, privately owned, planned community of 450 persons. The eastern tip of this planned community (an area of 0.34 square miles, in which no persons reside) lies within 35 miles of the reference point of Little Rock, Arkansas, a major market (#50). The area in question, is not at this time owned outright by the developers of Hot Springs Village, who possess only an option to buy this parcel of land. The land will not be included in the community for some time to come; Hot Springs Village is being developed according to a planned pattern of growth, and the 0.34 square miles has not been developed in any way, and, in fact there are no access roads to this area at all.

3. In these circumstances, it seems appropriate to consider this a *de minimis* waiver situation, waive Section 76.5 of the Commission's Rules, and treat Hot Springs Village as lying wholly outside television markets. See *Diversified Communication Investors, Inc.*, FCC 72-963,

—— FCC 2d ——. Our grant will be of a limited duration (March 31, 1977), at which time we will review the facts and determine whether a continuation of the waiver is justified.

In view of the foregoing, the Commission finds that a grant of the above-captioned application and petition would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Application for Certificate of Compliance" (CAC–920), and the "Petition for Special Relief" (CSR–197) filed on August 1, 1972, by Village CATV, Inc., IS GRANTED to the extent indicated in paragraph 3 above, and an appropriate Certificate of Compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1126

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of THE WESTERN UNION TELEGRAPH CO., NEW YORK, N.Y. Consolidation of 22 Public Telegraph Offices Into Single Public Message Center	Docket No. 19267 File No. TD 17972

MEMORANDUM OPINION AND ORDER

(Adopted December 13, 1972; Released December 19, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS DISSENTING.

1. On November 3, 1972, Western Union International, Inc. (WUI) filed a Petition for Stay and a Petition for Reconsideration of our Decision in this proceeding. The Decision, released October 4, 1972, held that the public interest would be served by a partial grant of The Western Union Telegraph Company's (Western Union) application to consolidate 22 public branch offices in lower Manhattan into a single Public Message Center. Oppositions to each Petition have been filed by Western Union, and WUI has replied to the oppositions. Since the action we are taking herein dispenses with the Petition for Reconsideration, it will not be necessary to rule on the merits of the Petition for Stay, and it will accordingly be dismissed.

2. WUI argues again that the record should have been reopened so that certain findings of the New York State Public Service Commission (PSC) indicating alleged shortcomings in Western Union's service, could be added to the record.[1] This same point was argued in WUI's Petition to Reopen the Record. As stated in the Recommended Decision (footnote 18) of the Chief, Common Carrier Bureau, "WUI's allegations, even if true, would not alter the substance of our findings and conclusions herein." Other than WUI's assertion that there is "substantial danger that [Western Union] will not adhere to its commitments", WUI has not supported its request for reconsideration of our action denying its Petition to Reopen the Record.

3. WUI has stated that denial of its Motion for Oral Argument was inappropriate. In paragraph 4 of the Decision, we stated our belief "that the issues have been adequately explored in the hearings and on the pleadings and that no useful purpose would be served by oral argument." WUI has advanced no reasons for reversing that judgment.

[1] We note that, although the PSC was served with copies of all pleadings in this proceeding, it has not seen fit to support WUI in this request.

4. It is argued by WUI that a series of letters between Western Union and the Common Carrier Bureau's staff with reference to Western Union's tariff delivery standards constituted an attempt by Western Union to persuade the Bureau that a favorable ruling in this proceeding was a prerequisite for the improved New York City delivery standards sought by the Bureau. Although, as WUI pointed out, Western Union constantly referred to the need for implementation of the Public Message Center concept, the Bureau, in its letter of August 23, 1972, rejected Western Union's insistence on a favorable decision in this proceeding prior to improving such standards. Thus it is clear that the Commission's consideration of the issues in this proceeding has not been prejudiced by Western Union's references to the Public Message Center concept, and therefore WUI has no grounds for complaint.

5. WUI further argues that since one of the bases for the Commission's approval of the Public Message Center plan was to enable Western Union to eliminate the SS38 switching center with its attendant problems, and since according to a September 15, 1972, Western Union letter, the daily load being switched by the SS38 has dropped from 13,000 messages down to only 7,000 messages, then one of the main bases of the Decision has been undermined. The SS38 switching center was only one of several factors considered by the Commission in arriving at the decision.

6. Finally WUI objects to the Commission's general approval of the concept of Public Message Centers in New York City. However, the Commission stated that "the discontinuance of any additional branch offices must be preceded by an appropriate application from Western Union for Commission authorization which will be granted only upon a finding by the Commission that the telegraph needs of the public can be reasonably satisfied by a consolidation of branch office functions." (Recommended Decision, para. 6) Thus, although the general concept of Public Message Centers, based on the facts of record in this proceeding with respect to one particular geographic area, has been endorsed, it is clear that each application filed by Western Union for consolidation of public branch offices into Public Message Centers will be examined on an individual basis to insure that each consolidation is in the public interest.

7. In view of the foregoing, IT IS ORDERED, That WUI's Petition for Reconsideration is DENIED.

8. IT IS FURTHER ORDERED, That WUI's Petition for Stay is DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–111

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
W. M. E. D. ASSOCIATES, INC., NEWARK, N.J.	BP–19,083
FIDELITY VOICES, INC., NEWARK, N.J.	BP–19,081
GREATER NEWARK BROADCASTERS, INC., NEWARK, N.J.	BP–19,085
Request Construction Permits for Regular Authority To Operate the Facilities of WNJR, Newark, N.J. (1430 kHz, 5 kw DA–N, U)	

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 6, 1973)

BY THE COMMISSION:

1. The Commission has before it the above-captioned applications. These applications are three of nine applications which have been tendered, each requesting regular authority to operate the facilities of station WNJR, Newark, New Jersey. The three captioned applications have not been accepted because their acceptance or rejection depends on the Commission's disposition of the following pleadings which are now under consideration: a petition to dismiss the application of W. M. E. D. Associates, Inc. (WMED), filed by Sound Radio, Inc., a competing applicant for the WNJR facility; WMED's reply to the petition and Sound Radio's response; petitions to return the applications of Fidelity Voices, Inc.,[1] and Greater Newark Broadcasters, Inc., filed by Community Group for North Jersey Radio, Inc., another competing applicant for the WNJR frequency; the applicants' oppositions and Community Group's replies.

2. In urging the rejection of the WMED application, Sound Radio accuses WMED of "deliberately" declining to comply with a requirement of section III of FCC Form 301 by failing to submit a balance sheet, and of being "smugly unresponsive" to another requirement that applicants submit information as to working capital. The latter charge is based on a statement in one of WMED's exhibits to the effect that "Applicant is also negotiating for a working capital loan." In its responsive pleading, Sound Radio charges WMED with bad faith and cites WMED's failure to file copies of shareholders' subscription agreements, balance sheets of individual stockholders and net income

[1] The Fidelity Voices application was originally filed in the name of Charles A. Stanziale, Managing Trustee, Fidelity Voice Trustees. It has since been amended to reflect the incorporation of the applicant and a change in name to Fidelity Voices, Inc.

statements of individual shareholders. Sound Radio, in its responsive pleading, also asserts that the failure to file a balance sheet and the alleged failure to furnish information as to working capital, and presumably WMED's response to Sound Radio's charges, "present a question of first impression."

3. Sound Radio's assertion that the failure to meet all the requirements set forth in the Commission's application form presents a question of first impression is simply incorrect.[2] Examination of applications for broadcast authorizations filed with this agency discloses that there are omissions in a great majority of those applications. Because WMED has failed to file the prescribed supporting documents, the Commission is unable at this time to find that the applicant is financially qualified. Although the applicant has filed a corporate balance sheet, the application requires further amendment to include necessary documents before its financial qualifications can be assessed. The omissions, however, do not constitute any basis for summarily rejecting an otherwise substantially complete application. Sound Radio's petition to dismiss the WMED application will be denied.

4. Community Group argues that the applications of Fidelity Voices and Greater Newark are not substantially complete within the meaning of section 1.564 of the Commission's rules and should be returned. In the case of Fidelity Voices, Community Group points out that in the application as originally filed, the applicant failed to state the methods used by the applicant to ascertain the needs and interests of the public to be served, to describe the significant needs and interests of the public the applicant proposes to serve and to list typical and illustrative programs the applicant plans to broadcast. Community Group also cites Fidelity Voices' failure to file section VI, FCC Form 301 (equal employment opportunity program).

5. In opposition to Community Group's petition to return its application, Fidelity Voices not only responded to Community Group's arguments, but also amended its application extensively to include the originally omitted material, including a section VI. The Commission does not pass on the sufficiency of the applicant's showing, but the application is now substantially complete and will be accepted.

6. Community Group urges the return of the Greater Newark application because the applicant failed to submit data with respect to the city of Newark (community profile) and to indicate the anticipated time segments, duration and frequency of various programs required by questions and answers 9 and 29, respectively, of the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). Community Group also noted that Greater Newark has also failed to submit section VI of the application form.

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[2] Among the charges leveled at WMED by Sound Radio is the accusation that WMED has shown the availability of only $10,000 to meet its construction and operating costs. This charge ignores the fact that WMED has represented that it will acquire substantial funds from the sale of corporate stock. Although the applicant has not submitted the required supporting material, we will not assume that such funds are not available and that the applicant cannot, in the hearing or by amendment prior to hearing, substantiate the availability of these funds. Failure to provide such substantiation will, of course, preclude a finding ultimately that the applicant is financially qualified.

7. In response, Greater Newark argues that its application is complete and that it was prepared in accordance with the Commission's instructions on the application form as the applicant understands them. One of Greater Newark's arguments is somewhat surprising. It argues that the instructions do not call for the submission of section VI of the form. However, the form filed by Greater Newark and section 73.125(c) of our rules clearly indicate the requirement that an applicant for a construction permit must file section VI of the form as well as all other sections of the form. Greater Newark's argument that it understands that nondiscriminatory practices in employment are the subject of both federal and New Jersey State law does not excuse it from filing the required equal employment opportunity program.

8. The failure to file section VI with its application is a serious omission, and this omission precludes a finding that the application of Greater Newark is substantially complete. However, since Greater Newark attempts to excuse the omission by a legal argument, the Commission will accept the application subject to the condition that Greater Newark file, on section VI of FCC Form 301, an equal employment opportunity program within thirty (30) days of the date of the release of this Order. The section should be filed in triplicate as an amendment to Greater Newark's application, should be signed by an officer of the corporation, and meet all other requirements relating to amendments to applications. In the absence of such an amendment within the time specified, Greater Newark's application will be automatically dismissed.

9. Greater Newark's argument that its application is complete, notwithstanding the failure to include a community profile and to indicate the anticipated time segments, duration and frequency of programs proposed, seem to indicate that the applicant may be unaware of the Commission's requirements set forth in the *Primer on Ascertainment of Community Problems, supra.* It is very important that an applicant inform itself of all the Commission's requirements and supply the necessary data required by the application form and the Commission's rules. Greater Newark would be well advised to review the Commission's *Primer* and to revise its statement of program service and supporting documents accordingly. The Commission, however, does not find that the omissions in Greater Newark's statement of program service are such that the application must be held to be incomplete on this ground.

10. Although not material to the Commission's present determination, some comment on another misconception of Greater Newark appears appropriate. In commenting on its program-proposal, Greater Newark states that it is its understanding that each individual applicant will be expected to take the witness stand in the forthcoming hearing on the Newark applications and "carefully explain its proposal." It is generally recognized that, except in rare instances, testimony on program content is not ordinarily permitted in hearing proceedings. See *Policy Statement on Comparative Broadcast Hearing*, 1 FCC 2d 393, 5 RR 2d 1901 (1965). The Commission has no present intention of providing that evidence on program content will be received in the hearing proceeding on the Newark applications.

11. Since the Newark applications were tendered, the Commission has been advised that Fidelity Voices, Inc., and Greater Newark Broadcasters, Inc., have reached an understanding with two other Newark applicants, The Brown Broadcasting Corp. (File No. BP-19084) and Community Action Radio Enterprises (File No. BP-19082), whereby the four applicants will merge and compete for the Newark facility as a single applicant. The agreement also provides that any other applicant may participate in the merged entity on equal terms. In view of this understanding, it appears that some of the applications will be dismissed concurrently with the merger and that further amendments will be necessary in connection with the merger. Pending that event, the Commission will accept the three applications which have not heretofore been accepted, but withhold further action until receipt of the contemplated merger plan.

12. Accordingly, IT IS ORDERED, That the petition to dismiss the application of W. M. E. D. Associates, Inc., filed by Sound Radio, Inc., and the petitions to return the applications of Fidelity Voices, Inc., and Greater Newark Broadcasters, Inc., filed by Community Group for North Jersey Radio, Inc., ARE DENIED.

13. IT IS FURTHER ORDERED, That the applications of W. M. E. D. Associates, Inc., and Fidelity Voices, Inc., ARE ACCEPTED for filing.

14. IT IS FURTHER ORDERED, That the application of Greater Newark Broadcasters, Inc., IS ACCEPTED for filing subject to the condition that, within thirty (30) days of the release of this Order it shall amend its application to include its equal employment opportunity program on section VI of FCC Form 301 and that if the application is not amended as indicated, the application will be automatically dismissed.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R–53

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WHJB, INC., GREENSBURG, PA. For Construction Permit	Docket No. 18868 File No. BP–17962

APPEARANCES

Isadore G. Alk, on behalf of WHJB, Inc., and *Jay L. Witkin*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted January 29, 1973; Released February 2, 1973)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER CONCURRING WITH STATEMENT. BOARD MEMBER NELSON DISSENTING WITH STATEMENT.

1. This proceeding involves the application of WHJB, Inc. (WHJB),[1] licensee of standard broadcast Station WHJB, Greensburg, Pennsylvania, for an increase in daytime power from 1 kw directional to 5 kw directional. A petition to deny WHJB's application was filed by WTRA Broadcasting Company (WTRA), licensee of standard broadcast Station WTRA, Latrobe, Pennsylvania.[2] By Memorandum Opinion and Order, FCC 70–547, released May 27, 1970, the Commission designated the application for hearing on financial and *Suburban* issues, as well as the following Suburban Community issue (Issue (2)):

> To determine whether the instant proposal will realistically provide a local transmission facility for its specific station location or for another larger community, in the light of all the relevant evidence, including, but not necessarily limited to, the showing with respect to:
>
> (a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programming needs;
>
> (b) The extent to which the needs of the specified station location are being met by existing aural broadcast stations;
>
> (c) The extent to which the applicant's program proposal will meet the specific unsatisfied programming needs of its specified station location; and
>
> (d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

On September 1, 1971, Administrative Law Judge Ernest Nash released an Initial Decision (FCC 71D–57) in which he concluded that

[1] On January 6, 1972, WHJB filed a petition to amend record *nunc pro tunc* or to reopen record to substitute as applicant in this proceeding WHJB Radio, a Limited Partnership, in lieu of WHJB, Inc. and a Statement concerning the same matter. Since no substantial change of beneficial interest or control is involved, the Board will reopen the record for the limited purpose of substituting WHJB Radio, a Limited Partnership, as the applicant in this proceeding.

[2] WTRA was made a party to the proceeding and submitted predesignation pleadings, but did not participate after filing a Notice of Appearance.

WHJB had met its burden of proof under all of the issues. He therefore recommended a grant of WHJB's application. The proceeding is now before the Review Board on exceptions filed by the applicant and the Broadcast Bureau. The Bureau, which urged denial of the application in its proposed findings and conclusions, excepts to the Presiding Judge's resolution of the Suburban Community issue. No exceptions were taken to the Presiding Judge's findings and conclusions on the financial and *Suburban* issues.[3] The Board has reviewed the Initial Decision in light of the Bureau's exceptions, the arguments of the parties[4] and our examination of the record. We agree with the Presiding Judge's resolution of the financial and *Suburban* issues. However, the Board is of the opinion that the Presiding Judge erred in his ultimate conclusion that WHJB rebutted the 307(b) presumption of service to Pittsburgh. Accordingly, we hold that, on this record and for the reasons hereinafter set forth, WHJB's application must be denied. While we disagree with the Presiding Judge's ultimate conclusion to grant WHJB's application, we adopt his findings and conclusions, except as modified in this Decision and in our rulings on the Exceptions as set forth in the Appendix attached hereto.

2. *Technical and Engineering Considerations.* WHJB, a Class III station operating unlimited time, is applying to increase its daytime power from 1 kw directional to 5 kw (the maximum power for its class) and to change its directional pattern. WHJB contends that the power increase is needed to overcome alleged "man-made noise" in Westmoreland County. No change is proposed in the WHJB nighttime operation.

3. The city of Greensburg,[5] seat of Westmoreland County, is located about 20 miles southeast of Pittsburgh (population 604,332) at the closest city limits. With WHJB's present daytime pattern, its 5 mv/m contour falls 4.5 miles southeast of the nearest city limit of Pittsburgh; operating as proposed, WHJB's 5 mv/m contour will completely encompass Pittsburgh and extend about 9.5 miles west of the city. Thus, 5 mv/m coverage of Pittsburgh will go from zero to 100%. It is the location of the 5 mv/m daytime contour and the population difference in the cities involved that is the basis for specification of the Suburban Community issue.[6] Here, the difference in population of the cities

[3] WHJB filed four "protective" exceptions to the Initial Decision. All of them concern the Suburban Community issue.

[4] Oral argument was held before a panel of the Review Board on July 11, 1972.

[5] Unless otherwise stated, all population data herein is based on 1960 U.S. Census figures. The populations of the Greater Greensburg Area (1960 U.S. Census and 1970 Advance Report) are as follows:

	1960	1970
Greensburg	17,383	15,870
South Greensburg	3,058	3,288
Southwest Greensburg	3,264	3,186
Hempfield Township	29,704	39,196
Total	53,409	61,540

[6] *Policy Statement on Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 FCC 2d 190, 6 RR 2d 1901 (1965), reconsideration denied 2 FCC 2d 866, 6 RR 2d 1908 (1966). Briefly, the *Policy Statement* provides that when an applicant's proposed 5 mv/m daytime contour would penetrate the geographic boundaries of any community having a population of over 50,000 persons and having at least twice the population of the applicant's community, a presumption will arise that the applicant realistically proposes to serve the larger community rather than his specified community. 2 FCC 2d at 193, 6 RR 2d at 1906.

involved greatly exceeds the basic figure utilized by the *Policy Statement*—twice the size of the applicant's specified community. Pittsburgh is more than thirty times the size of Greensburg. Also, under the 5 kw proposal, the major lobe of its directional array is directed away from Greensburg and towards Pittsburgh, whereas under the present 1 kw pattern, the major lobe is directed away from Pittsburgh. The present and proposed gain/loss figures are as follows:

	Population	Area
Currently receiving primary service	1,523,087	8,135
Proposed primary service	3,771,665	15,949
Gaining primary service	2,225,730	8,026
Losing primary service	7,152	212
Net Gain	2,248,578	7,814

WHJB's present 0.5 mv/m contour encompasses all of Westmoreland County and its present 2.0 mv/m contour encompasses all urban areas of the county with the exception of the communities of Monessen (population 18,424), North Belle Vernon (population 3,148) and West Newton (population 3,982). Therefore, of a total county population of 352,629, approximately 92.7% or 327,075 persons receive primary service from the present operation. The engineering contentions in dispute, in the Board's view, are: (1) the existence and intensity of man-made noise in Westmoreland County; and (2) whether the magnitude of the power increase requested by WHJB is necessary to overcome this alleged man-made noise.

4. *Man-made noise.* WHJB's consulting engineer testified that, "Westmoreland County is a manufacturing and industrial area where high signal levels are desirable to overcome man-made noise." However, we agree with the Presiding Judge that WHJB failed to submit "detailed evidence on the extent and location of such areas". In fact, no evidence, other than the spot field measurements discussed, *infra*, was presented as to the level of such interference. The applicant further alleged that reception of WHJB in areas of Westmoreland County that receive less than a 2 mv/m signal is "blanketed" by man-made noise from power lines. In support of this allegation, WHJB submitted measurements taken in Seward, New Florence, Monessen, North Belle Vernon and West Newton.[7] The measurements are of existing WHJB signal and of the noise level at chosen spots. No attempt was made to establish the WHJB signal by accepted standards. See Sections 73.153 and 73.186 of the Rules. WHJB concedes that the spot field intensity measurements are unacceptable for determining signal contours, but

[7] Seward and New Florence are approximately thirty miles east of Greensburg, and the other three larger towns are 12 to 18 miles southwest of Greensburg.

urges that the measurements submitted are acceptable for illustrating the noise level in the area.[8] The value of these measurements is, at best, questionable even though they are not being used for the purpose of locating a specific contour. For example, WHJB has submitted a city map of Monessen, but no maps of other areas; and no exhibits were submitted which indicate the location of the points measured in relation to the power lines said to exist in the areas, with the exception that at least two measurements were taken *under* power lines—a method likely to produce distortion of the measured signal. There is also no indication as to whether the locations at which the measurements were taken represent the average distance of residential homes from the power lines; [9] what percent of the county population is located in the vicinity of power lines; or under what weather conditions the measurements were taken. Moreover, there has been no attempt to document whether there has been an overall increase in the total miles of power lines throughout the county; if complaints about the reception of WHJB have increased during recent years; [10] and whether there is any evidence to connect the two phenomena. Finally, WHJB's engineer conceded that it is not merely the noise level which is preventing the residents of West Newton, Monessen and North Belle Vernon from receiving an adequate signal from WHJB,". . . but it is also the fact that the signal itself is not strong enough to comply with the Commission's Rules . . .". In other words, all three communities are outside the existing WHJB 2.0 mv/m contour, and thus do not receive the minimum signal required for service to the communities, each of which has a population of over 2,500.[11] Therefore, WHJB has not established the existence of a significant man-made noise level, which is a basic premise for its application.

5. *Magnitude of power increase requested.* The magnitude of the power increase requested here was of significant concern to the Commission in the designation Order; [12] and nothing has been presented at the hearing to warrant any lessening of that concern. WHJB continues to assert that it needs the increase to 5 kw power to overcome man-made noise. In an attempt to prove its need for this much power

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[8] The Bureau, in its Exception 8, cites four cases (*Texas Star Broadcasting Co.*, 5 RR 144 (1950); *Manistee Radio Corp.*, 5 RR 302 (1950); *Lemoyne College*, 6 RR 1251 (1951); and *Suffolk Broadcasting Corp.*, 6 RR 457 (1951)) for the proposition that spot measurements cannot be accepted for any purpose. WHJB in its Reply to Exceptions, attempts to show that the cases do not support such an inflexible proposition. The Board does not consider it necessary to decide which of these interpretations is the more accurate statement of the law in the area because of its finding, *infra*, that the spot measurements themselves are inadequate in the present case.

[9] At one point WHJB's engineer testified that his measurements were taken about the same distances from the power lines as the houses in the area; however, since this testimony makes reference to an unidentified map, it is impossible to discover exactly which areas he is discussing.

[10] WHJB also offered two letters to support its allegations of interference to its signal from power lines. One, from the West Penn Power Company, indicates a *decrease* in radio-TV interference complaints to the Power Company from 1965–1969; gives no indication as to what radio or TV station was complained about; and does not identify or give the location of the complainant. The other letter was not received in evidence.

[11] Sections 73.182 (f) and (g) of the Commission's Rules provide that a community of 2,500 population requires a signal of 2.0 mv/m to provide primary service. *Bill Garrett Broadcasting Corp.*, 13 FCC 2d 7, 13 RR 2d 163 (1968).

[12] The Commission stated in the designation Order:

". . . since the proposed power appears to be greatly in excess of that needed to provide adequate coverage of the specified community and its immediate environs, we find that the applicant has failed to rebut the aforementioned presumption [of service to the larger community]."

109-026—73——12

it submitted the deficient noise level measurements, discussed above, plus spot field intensity (signal strength) measurements of WHJB's signal at the same 42 points. At each measuring point the field intensity measurement taken on WHJB and the noise intensity measurement were compared to establish a signal-to-noise ratio. WHJB submitted exhibits which set forth its alleged signal-to-noise ratio with the present and proposed signals. In his testimony, WHJB's engineer stated that in his opinion a ratio of 30 to 1 or greater is necessary in order to have a listenable signal, but this signal-to-noise ratio is unsupported by scientific data or other opinions. WHJB appears to rely solely on the expertise of its engineer in the field of man-made noise; however, the engineer himself conceded that the choice of this particular ratio was subjective and that it arose from his listening to the WHJB signal in the county when he took the measurements in question.

6. The Board cannot accept the suggested 30 to 1 ratio. There is a lack of valid data supporting the choice of ratio. Moreover, although no standards have been established for determining man made electric-noise,[13] the Commission's Rules do suggest a method for determining interference from such noise.[14] The applicant has not established by acceptable evidence that this method is faulty. In sum, WHJB has failed to prove another major allegation in support of its requested power increase.

7. Moreover, even if we accept, for the sake of argument WHJB's suggestion of a 30 to 1 ratio, WHJB's alleged need for 5 kw of power is still unconvincing. For example, WHJB insists that its sole reason for requesting a power increase is to provide better service to Westmoreland County. However, it concedes that the only community in the county not receiving adequate service are Seward (population, 754), New Florence (958), Monessen (18,424), West Newton (3,982) and North Belle Vernon (3,148). This represents a total population of 27,266 or 7.3% of the county population. According to the signal-to-noise measurements taken at 42 locations in and around these towns and computed by WHJB, at present eight locations have a signal-to-noise ratio of 30 to 1 or better, whereas under the 5 kw proposal, twenty points will have such a ratio. Thus, even under WHJB's own proposed standard, only 12 additional locations (or 28.5%) would attain the 30 to 1 signal-to-noise ratio which WHJB considers necessary for adequate service. WHJB's engineer admitted that, even with the requested power increase, the entire projected gain area in the county will not, in fact, receive primary service because of shadowing of the signal due to the rough terrain. In effect, then, WHJB is asking for a 500% power increase to improve service to a relatively small *undeter-*

[13] *Manistee Radio Corp., supra* at 306.

[14] See reference note to Section 73.182(f) of the Rules:

NOTE.—Standards have not been established for interference from atmospherics or manmade electric noise as no uniform method of measuring noise or static has been established. In any individual case objectionable interference from any source except other broadcast signals, may be determined by comparing the actual noise interference produced during reception of a desired broadcast signal to the degree of interference that would be caused by another broadcast signal within 20 c/s of the desired signal and having a carrier ratio of 20 to 1 with both signals modulated 100 percent on peaks of usual programs. Standards of noise measurements and interference ratio for noise are now being studied.

mined number of persons in the county. In addition, WHJB's engineer testified that he was never specifically instructed to increase the signal intensity in the direction of Pittsburgh; however, only two potential operations were analyzed in WHJB's alleged attempt to improve service to Westmoreland County. A 1 kw non-directional operation was found unsatisfactory because of alleged interference with a station in Beckley, West Virginia, and after that WHJB's engineer suggested the present 5 kw proposal.

8. Finally, on cross-examination, the engineer admitted that it is possible to redesign WHJB's present radiation pattern so that a 2.0 mv/m signal can be rendered to all of Westmoreland County, employing a power of 1 kw. This statement by WHJB's engineer implies that WHJB does not need its requested power increase in order to better serve its home county. Moreover, Melvin Goldberg, president of WHJB, testified that he never asked the engineer to attempt to remedy WHJB's signal problems at its present power. In view of all the foregoing and the fact that the applicant's engineer has testified that a 2.0 mv/m signal (primary service to the areas in question) can be obtained without a power increase, it is impossible for the Board to find that a power increase is necessary to improve service to Westmoreland County.

9. *Subissues.* In our opinion, WHJB's showing under the specific subissues does not overcome the presumption that the applicant is in reality attempting to serve Pittsburgh.[15] Very little substantive evidence was offered by WHJB; in fact, most of the exhibits and testimony offered to rebut the presumption consisted of unsupported generalizations and conclusions. Significantly, WHJB states that it is relying on the principles enunciated in *Naugatuck Valley Service, Inc.*, 8 FCC 2d 755, 10 RR 2d 737 (1967), affirmed *sub nom. Northeast Broadcasting, Inc.* v. *FCC*, 130 U.S. App. D.C. 278, 400 F. 2d 749, 13 RR 2d 2102 (1968), to support its requested power increase. However, a comparison of the facts in *Naugatuck* with WHJB's evidentiary showing clearly demonstrates that WHJB failed to meet its burden

[15] At a prehearing conference held on July 8, 1970, WHJB's counsel indicated he felt that subissue (b) is inapplicable to a case where a power increase is requested as opposed to a case involving an application for a new station; and at the oral argument before the Board WHJB's counsel indicated he felt there was a general lack of clarity about the issues. However, WHJB, although stating that it felt some ambiguity existed in the issues as framed, made the decision on the record at the prehearing conference to proceed at its peril rather than ask the Administrative Law Judge for clarification or the Review Board for modification and/or deletion of the issues. Therefore, any argument by the applicant on the ambiguity of the issues has been resolved by the applicant's own choice of a course of action. In this regard, it is noted that the United States Court of Appeals, in dictum, in *Northern Indiana Broadcasters, Inc.*, v. *FCC*, 148 U.S. App. D.C. 327, 459 F. 2d 1351, 23 RR 2d 2113 (1972), urged the Commission to clarify its standards for implementing the *Suburban Community Policy Statement*. In our view, the *Northern Indiana* case is clearly distinguishable from the instant one. In *Northern Indiana*, the Court appeared to be concerned with the Commission's standards in close cases, since the Court emphasized that the Commission could have decided the case the other way with no "violent intellectual wrench". In the present case, it would take a *substantial* "intellectual wrench" to decide this case the other way. As discussed, *supra*, WHJB has completely failed to substantiate its alleged reasons for needing the power increase, and as shown, *infra*, nothing in its showing on the specific Suburban Community subissues overcomes the presumption that WHJB is attempting to become a substandard Pittsburgh station.

of proof.[16] In both cases (*Naugatuck* and the instant case), the applicants were existing stations requesting a power increase, with the *Naugatuck* applicant going from a daytime only to a full-time operation. The engineering factors in *Naugatuck*, however, made the applicant's burden on the subissues substantially less than WHJB's.[17] For example, in *Naugatuck*, the applicant's primary service (daytime) to the larger city went from 90.2 to 100 percent of the population, a minimal increase; while in the present case WHJB's 2 mv/m coverage of Pittsburgh would go from 15 to 100 percent and its 5 mv/m coverage from zero to 100 percent, a significant change in the coverage pattern. Moreover, unlike here, the *Naugatuck* applicant made a detailed, specific and convincing showing, not only that the proposed station would continue to serve ascertained needs, but that it would expand its service so as to more comprehensively meet those needs, and serve unsatisfied needs which it was previously unable to meet because of its daytime only hours of operation. Finally, in addition to showing that the proposed operation would not rely any more heavily for revenues on the larger city than the existing operation, the *Naugatuck* applicant established that its proposal would provide service to white and gray areas—"strong public interest factors", which weigh "heavily" in favor of a grant.

10. As to the specific showing under the Suburban Community issue, WHJB has demonstrated and the Administrative Law Judge has found that Greensburg is neither a "suburb" nor "bedroom" community of Pittsburgh. The Judge devotes over 21 pages of the Initial Decision (paragraphs 28–79) to Greensburg's distinctiveness and to WHJB's programming for the community. The Board accepts the fact that Greensburg is a separate community; however, the Board is unable to agree with the Administrative Law Judge that the extensive evidence concerning the characteristics of Greensburg and Westmoreland County is sufficient to satisfy the applicant's heavy burden under subissue (a). The Commission, in *Monroeville Broadcasting Company*, 12 FCC 2d 359, 12 RR 2d 946 (1968),[18] held that it places little value on a showing in a 307(b) Suburban Community case that the specified community is a "distinct" community with specific needs and interests ". . . since virtually all suburban communities have their own political,

[16] The other two cases cited by WHJB at page 18 of its reply brief to support a grant of its application are also wholly inapposite. The cases (*Jersey Cape Broadcast Corp. (WCMC)*, 3 FCC 2d 681, 7 RR 2d 540 (1966); and *Major Market Stations, Inc. (KREL)*, 8 FCC 2d 13, 9 RR 2d 1368 (1967)), are Memorandum Opinions and Orders where it was determined that the 307(b) presumption was successfully rebutted by the respective applicant's pleadings. In this case, by contrast, the Commission determined that serious Suburban Community questions were raised by WHJB's application and that WHJB's pre-designation pleadings did not rebut the 307(b) presumption. In addition, the facts in those cases are so vastly different from this case that their citation is totally inappropriate. For example, in *Jersey Cape*, the applicant did not propose a directional operation (as does WHJB) and the coverage of the larger community was due *solely* to "the existence of a salt water path between [the specified community] and [the larger community]". 2 FCC 2d at 944, 7 RR 2d at 543. Here, WHJB's proposed 100% 5 mv/m coverage of Pittsburgh is not due to natural conductivity, but is the direct result of a high-powered directional antenna array chosen by the applicant.

[17] It is well established that "the engineering characteristics of a particular proposal affect the quantum of proof necessary to satisfy the standard as it is applied in a given situation . . ." *Lebanon Valley Radio, Inc.*, 35 FCC 2d 243, 24 RR 2d 586 (1972). See also *Harry D. Stephenson and Robert E. Stephenson*, 33 FCC 2d 749, 23 RR 2d 760 (1972); *Kittyhawk Broadcasting Corp.*, 20 FCC 2d 1011, 18 RR 2d 125 (1970), review denied FCC 70–891, released August 26, 1970.

[18] Affirmed *sub nom. Miners Broadcasting Co.* v. *FCC*, 15 RR 2d 2080 (D.C. cir. 1969).

civic, and social institutions and since many of them have a substantial population and an economic vitality independent from the central city." 12 FCC 2d at 360, 12 RR 2d at 948. See also *Naugatuck Valley Service, Inc., supra.* There are also numerous existing precedents which clearly indicate that more is required of an applicant in a 307(b) Suburban Community case than a simple recitation of the distinctive facts about its specified community. Subissue (a) requires a comparison of the two communities involved (*i.e.*, the specified community and the presumed community), including a discussion of the different characteristics of each community and the distinct programming needs of each which result from the differences established. See *Lebanon Valley Radio, Inc., supra.* See also *Monroeville Broadcasting Company, supra; Tri-State Broadcasting Co., Inc., (KUPD)*, 19 FCC 2d 1042, 17 RR 2d 689 (1969), review denied FCC 70–14, released February 13, 1970. In *Tri-State*, an applicant for a power increase for a station in Tempe, Arizona (pop. 24,897) unsuccessfully attempted to rebut the presumption of service to nearby Phoenix (pop. 439,170). In upholding the Presiding Judge's denial of the Tempe application, the Board stated that: ". . . the applicant made no meaningful effort to compare the demographic characteristics of Tempe and Phoenix, or to show that these differing characteristics, if any, translate into separate and distinct program needs as required [by the *Policy Statement*] . . ." 19 FCC 2d at 1043, 17 RR 2d at 691. While the Board agrees with WHJB that Tempe was clearly a "bedroom community" of Phoenix whereas Greensburg is not a "bedroom community" of Pittsburgh, we do not believe that this distinction eliminates the need for a comparison of the communities involved as required by the *Policy Statement.*

11. Again, in the *Monroeville* case, the required showing under subissue 2(a) was illustrated even more clearly. A station in Ambridge, Pennsylvania (part of the Pittsburgh Urbanized Area), operating daytime only, with an antenna directionalized away from Pittsburgh sought a change in operation to include a power increase and an antenna directionalized *toward* Pittsburgh. The proposed 5 mv/m contour would have penetrated three miles into Pittsburgh, covering 13.8 percent of the city's population. (At the time of the application the station's 5 mv/m contour did not penetrate Pittsburgh.) In denying the requested power increase, the Commission emphasized the following:

> If WMBA is to rebut the presumption and demonstrate that it is not a Pittsburgh station, it must show the extent to which the specified station locations have needs that are separate and distinct from those of the presumed community served, pursuant to issue (a)(1). WMBA's showing on this point is insufficient. It made no attempt to show how the needs of Ambridge are separate and distinct from those of Pittsburgh. Perhaps they are, but WMBA did not produce the evidence. On Aliquippa, WMBA has shown that the community has a different educational level from Pittsburgh's, a lower percentage of white-collar jobs, and a higher percentage of residents of foreign birth. However, it made no effort to translate these differences into needs. It made no surveys, and it supplied no meaningful affidavits, nor did it offer exhibits describing any alleged (a)(1) separate and distinct needs from the "presumed" community served (Pittsburgh). [12 FCC 2d at 363, 12 RR 2d at 951.]

The analogy to the present case is unmistakable. The above excerpt, which even involved the same presumed community served as in the present case, provided an unequivocal caveat to WHJB that to carry its burden on this issue it had to *translate* differences in the communities into programming needs. It simply failed to do so.[19] WHJB has presented no demographic showing or other material to indicate the characteristics of Pittsburgh. In an ill-disguised and belated effort to remedy this defect (after denying that there is a defect), WHJB, in its reply brief, requests the Board to take official notice of census data on some of the demographic characteristics of Pittsburgh and Greensburg. The data is limited to the racial composition of Pittsburgh, Greensburg and Westmoreland County, and the percentage of Greensburg and Pittsburgh workers employed in their home counties. This is clearly an improper attempt by WHJB to remedy a record evidentiary defect in its case and will not be accepted by the Board. *Cf Long Island Paging*, 32 FCC 2d 235 (1971), reconsideration denied 34 FCC 2d 216 (1972). Further, WHJB's argument that a favorable resolution of the *Suburban* issue also satisfies its burden under subissue 2(a) is unsound; the *Primer on Ascertainment of Community Problems by Broadcast applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971), does not require the same type of demographic data as does a 307(b) Suburban Community case. The *Suburban* issue speaks in terms of ascertaining the needs and interests of the community of license and proposed service area, while subissue 2(a) demands a showing of "separate and distinct programming needs", which inherently requires a comparison of the needs of the community of license and the larger community (in this case, Pittsburgh). *Lebanon Valley Radio, Inc., supra.* The difference between the two issues is apparent and, in the Board's view, quite significant.[20] Therefore, the Review Board has no choice but to find that WHJB has failed to carry its burden on subissue 2(a).

12. There appears to be no dispute concerning the amount and type of service provided to the Greensburg area.[21] According to paragraph

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[19] Again, WHJB's reliance on *Naugatuck* to support a grant of its application is misplaced. On this same issue, the applicant in that case produced four witnesses prominent in the smaller community who detailed specific school, industrial, political, civic and religious needs unique to the community of Naugatuck and indicated how these needs would be fulfilled by the station's programming. In contrast, WHJB's showing consisted primarily of evidence from *its president* illustrating that Greensburg is a distinct community and a recitation of its *present* programming.

[20] It is noted that WHJB, in its reply brief, cites the Review Board's Memorandum Opinion and Order in *Creek County Broadcasting Co.*, 31 FCC 2d 462, 22 RR 2d 891 (1971), to support its allegation that it has carried its burden on subissue 2(a). *Creek County* is inapposite. After noting that one of the applicants had "submitted considerable data attesting to the economic, political, educational and commercial independence" of the specified community, we declined to add the requested 307(b) Suburban Community issue against that particular applicant because: ". . . the technical aspects of [respondent's] proposal indicate a clear intention to direct his service to his specified community, and not to [the] adjacent [larger community]." Thus, it is impossible to compare the cases since it is clear that the 307(b) presumption of service to the larger community in *Creek County* was very weak because of engineering factors; while in the present case, the 307(b) presumption is exceptionally strong because of engineering factors. Moreover, a 307(b) Suburban Community issue was *added* against another of the applicants in *Creek County* because of engineering factors similar to WHJB's situation, *i.e.*, proposed high power and a directionalized antenna system serving more than fifty percent of the larger community. See *Creek County, supra*, 31 FCC 2d at 472, 22 RR 2d at 904. Therefore, *Creek County* is not precedent for a grant of WHJB's application.

[21] During the hearing, counsel for the Broadcast Bureau repeatedly requested WHJB's counsel to furnish a map depicting the contours of other broadcast stations providing service to the area. (As a term of art, this type of map, which is commonly used in proceedings such as this, is referred to as a "spaghetti map.") WHJB's counsel never complied with this request, and as a result, there is no clear showing of other services

21 of the Initial Decision, to which no exception has been taken, ten standard broadcast stations, including WHJB, serve Greensburg with a signal intensity of 2.0 mv/m or greater, daytime; and thirteen FM broadcast stations, including WAKU–FM, WHJB's sister station, serve Greensburg with a signal intensity of 1.0 mv/m or greater. A total of six of these AM and FM broadcast stations are located in Westmoreland County. Written interrogatories were sent to those stations, with the exception of WHJB and its sister Station WAKU–FM, which, according to WHJB, "serve all or a substantial portion of Greensburg." No attempt was made, however, to ascertain the extent to which any of these stations were serving the needs of Westmoreland County outside of Greensburg. Of the nineteen stations contacted, twelve replied. The replies indicate, as the Administrative Law Judge found at paragraph 67 of the Initial Decision, that none of these stations directs more than a minimal amount of programming to Greensburg. On the average, news from Greensburg is broadcast only when it is of general interest and the remainder of Greensburg-related programming consists of a few public service announcements. In contrast, WHJB is the only fulltime standard broadcast station in Westmoreland County; its present programming illustrates an emphasis on local news (12 local newscasts and headlines daily) and use of the station as an outlet for local religious, political, social and educational programming. The focus appears to be on Greensburg and the surrounding area of Westmoreland County.

13. The Administrative Law Judge, the Bureau and the applicant agree that WHJB, as presently operating, is adequately meeting the needs of Greensburg—the specified station location, and the Board finds no reason to disagree. However, subissue (c) demands a showing of the extent to which the proposal meets the *unsatisfied* needs of the specified community. And, since the applicant does not intend to substantially change its existing programming, it is clear that Greensburg will not benefit from a grant of the application. Despite the foregoing, the applicant urges that it has met its burden under subissue (c), because it has conducted a comprehensive survey of the gain area. However, the Board is of the view that the applicant has not shown that it will meet unsatisfied needs in the gain area.

14. Westmoreland County has a total of six aural broadcast services *originating* in the county. Although there is no one individual station that completely covers the county, numerous Pittsburgh and other outside stations provide additional service to the county. WHJB has not demonstrated a lack of service to the county. In the applicant's survey of the 2.0 mv/m gain area in the county, WHJB reports that those interviewed in Monessen, North Belle Vernon, and West Newton "felt the radio stations serving Westmoreland County were doing a good job". However, WHJB states that the need for a county-wide station serving the entire Westmoreland County area was mentioned

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available to the alleged "noise" areas or the gain and loss areas. At oral argument, WHJB's counsel argued that the "cost of submitting such a map was unnecessary". The Board regards this argument as untenable in light of the profitability of WHJB and the fact that, by requesting a power increase, it brought upon itself the many costs of a lengthy administrative proceeding. WHJB's refusal to furnish this map leaves numerous gaps in the record for which the applicant must take full responsibility.

since the only stations that now cover the entire county are primarily Pittsburgh stations. According to WHJB, "the civic and political leaders of West Newton generally stated that they are in a fringe reception area and are *not being served by any radio station.*" (Emphasis added.) Although the Presiding Judge accepted this statement, it is in conflict with the record testimony of WHJB's engineering witness that the 2.0 mv/m gain area in Westmoreland County is now receiving 2.0 mv/m reception from five or *more* aural broadcast services. Since clear proof of service to those areas could have been provided by WHJB if it had produced the "spaghetti map" which was repeatedly requested by the Bureau at hearing (see note 21, *supra*), the Board cannot accept (as the Presiding Judge did) general statements of lack of service which are contradicted elsewhere in the record.[22] Finally, as noted previously, the applicant's interrogatories did not seek to determine what, if any, needs of Westmoreland County (outside of Greensburg) are being met by existing stations; in the absence of such information, the extent to which the applicant would meet unsatisfied needs in that area simply cannot be ascertained.[23]

15. WHJB's submissions on its advertising revenues show clearly that the station is profitable and that total advertising revenues could support the requested power increase. However, the breakdown in revenues provided by the applicant does not show that the proposed operation could be supported by revenues from the "specified station location" as required by the Suburban Community issue. Greensburg, of course, is the specified station location. It is not *Greater* Greensburg, nor is it Westmoreland County. See *Risner Broadcasting*, *supra*. Contrary to the Broadcast Bureau's contention, WHJB did report revenues from Pittsburgh; it did not, however, give the breakdown for Greensburg. WHJB lists 30% ($102,000) of its 1970 estimated advertising revenues as coming from "Greater Greensburg", which, according to WHJB's Exhibit 2 is composed of Greensburg (population 17,383), South Greensburg (3,058), Southwest Greensburg (3,264) and Hempfield Township (29,704). Thus, by population, at least, Greensburg itself represents only one-third of this total area. No breakdown of revenues is given for the individual communities. WHJB also lists 37% ($125,800) of "local" advertising revenues under "other areas in Westmoreland County". Without a further breakdown it is impossible to know if these revenues, which compose the largest single item in WHJB's income, are coming primarily from the Pittsburgh edge of the county or elsewhere. Equally obscure is the 9% ($30,600) listed from "other areas outside of Westmoreland County".

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[22] Compare *Naugatuck*, where the applicant produced substantive evidence to show that it was unable to meet certain needs of its community which it described specifically, because of its daytime only operation. In this case, WHJB offered only general statements on the need for a "county-wide" station.

[23] Since no unsatisfied needs have been shown under subissue 2(c), it is unnecessary to comment extensively on the program proposal of WHJB. It is noted that very little change is contemplated in its programming relating to the Westmoreland County gain area, aside from expanded county news coverage. And even this allegedly "expanded" coverage is questionable since WHJB's Exhibit 9, p. 51, states:

"Applicant proposes to obtain news from these areas in proposed gain area by telephone calls to police stations, fire departments and hospitals, as well as utilizing 'news stringers' and our Associated Press wire service."

Since this appears to be the method by which WHJB states that it serves the county now, the Board concludes that no substantial programming changes are planned for the county.

The remaining 24% of revenues is listed as national and regional with 15% listed as coming from Pittsburgh. Based on these very generalized figures, it is difficult to determine the origin of WHJB's advertising revenues to make a finding under subissue 2(d). Therefore, without a more precise breakdown of Greensburg revenues, the Board concludes that WHJB's burden on subissue 2(d) has not been met.

16. *Realistic Local Transmission for Specified Station Location.* The Suburban Community issue is not limited solely to the subissues discussed above, but includes all relevant evidence "to determine whether the instant proposal will realistically provide a local transmission facility for its specified station location or for another larger community." [24] Therefore, the Board must consider other important factors relating to WHJB's application.

17. *Gain and Loss Figures.* As noted in the technical and engineering section of this Decision, *supra*, WHJB's radiation will shift from a pattern whose major lobe is southeast, away from Pittsburgh to one which radiates excess power to the northwest, toward Pittsburgh. As a result, more than 7,000 persons in 212 square miles in Maryland and Virginia will *lose* primary service. WHJB did not provide information on the number of broadcast services presently received in the loss area. Therefore, WHJB can give no assurance that the loss areas will be adequately served after its primary service is withdrawn.[25] In any event, loss of broadcast service to anyone is *prima facie* inconsistent with the mandate of Section 307(b), and, WHJB has presented no countervailing public interest considerations to justify this loss of service.[26]

18. The present 0.5 mv/m contour of WHJB covers all of Westmoreland County and the 2.0 mv/m contour covers all of the urban areas within the county except Monessen (18,424), North Belle Vernon (3,148) and West Newton (3,982). The proposed 5 kw service would place a 2.0 mv/m signal over the entire county. At present, 327,075 persons or 92.7% of a total county population of 352,629 receive primary service from WHJB. At best, the new proposal would provide primary service to approximately 25,000 or 7.3% more of the residents of Westmoreland County. Thus, in order to obtain increased service to a maximum of 25,000 people (since WHJB insists its primary reason for requesting a power increase is to improve service to the county), the new service will result in additional primary service to over 2,200,000 people outside the county—almost 100 times the increase in the county.

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[24] This is the standard clause used by the Commission when designating a 307(b) Suburban Community issue. See, *e.g., Tri-State Broadcasting Co., Inc. (KUPD), supra; Naugatuck Valley Service, Inc., supra; Creek County Broadcasting Co., supra.*

[25] Compare *Naugatuck Valley Service, Inc., supra*, where the applicant (also an existing licensee) proposed to *cure* white and grey areas, not to *create* them, as WHJB might do.

[26] "[A]ny deprivation or degradation of [broadcast] service to any group of people is *prima facie* not in the public interest and can be justified only by countervailing public interest factors sufficient to offset that deprivation or degradation." *Central Coast Television (KCOY–TV)*, 14 FCC 2d 985, 986, 14 RR 2d 575, 579 (1968), review denied FCC 69–614, June 4, 1969, reconsideration denied 16 RR 2d 960, appeal dismissed U.S. App. D.C. Case No. 23,422, August 19, 1971, see *Television Corporation of Michigan* v. *FCC*, 111 U.S. App. D.C. 101, 294 F. 2d 730, 21 RR 2107 (1961). This principle applies with equal force to standard broadcast stations. *Cf. Fred Kaysbier*, 20 RR 2d 844 (1970).

19. More important, however, the population composition of WHJB's primary service area will change radically. At present, residents of Westmoreland County compose over 20% of WHJB's primary service area and the Greensburg area appears to be the largest population center. With WHJB operating as proposed, Westmoreland County residents will account for less than one-tenth of WHJB's primary service area and the largest population center will be Pittsburgh. It was just such a situation that the Commission had in mind when it said in the *Policy Statement*, *supra:*

> Our experience compels us to conclude that as their power and coverage are increased to serve larger numbers of persons, stations in metropolitan areas often tend to seek out national and regional advertisers and to identify themselves with the entire metropolitan area rather than with the particular needs of their specified communities. [2 FCC 2d at 192, 6 RR 2d at 1905–06]

WHJB's intention to attract a Pittsburgh audience is already quite clear and the concern the Commission expressed in the *Policy Statement* is fully justified in the present situation.

20. The Board does not find fault with the Administrative Law Judge's conclusion that WHJB is currently providing a local transmission service for Greensburg. Since Greensburg is the major population, retail, commercial, industrial, political, and cultural center of WHJB's primary service area, it would be economically impractical not to concentrate the station's programming in this area. However, although the Board agrees with the Presiding Judge that WHJB presently programs primarily for Greensburg, we cannot accept the Presiding Judge's statement that:

> No effort is made to attract advertisers for the Pittsburgh market.

This statement is belied by the fact that the major personality on WHJB's program schedule is Davey Tyson, a former Pittsburgh radio personality for many years. From Monday through Friday, Tyson is on the air from 9:30 A.M. to noon, and again from 1:00 P.M. to 3:00 P.M.[27] In its advertising material WHJB emphasizes Tyson's connection with Pittsburgh by including a feature article on Tyson from *The Pittsburgh Press.*

21. Tyson's main programming effort for WHJB consists of hosting a morning and afternoon "call-in" program called "The Davey Tyson Phone Party". Again, WHJB's advertising stresses the impact of this program on the Pittsburgh market. The promotional material reads as follows:

> HOW DO YOU REACH 177,000 HOUSEWIVES IN WESTMORELAND COUNTY 1st MOST POPULOUS COUNTY SURROUNDING THE *PGH. MARKET* 5th MOST POPULOUS COUNTY IN PA.
>
> In Westmoreland County, 'Every day is Ladies Day . . . On Davey Tyson's Phone Party!' And Davey's phone party means solid sales for you in the 1st most populous county surrounding *the Pittsburgh market!!* Think of it . . . Westmoreland County with total retail sales of $361,585,000 . . . and WHJB serves it all.

[27] It is not possible to say if Tyson also does other programs, since WHJB's exhibits do not provide the name of the host for all programs.

Take a closer look at Davey Tyson! Davey's been with WHJB since '64, but started in radio in 1932 and now has some 17 year's *experience and sales power in the Pittsburgh market.* Matter of fact, Davey still retains many loyal listeners from his early days in *Pittsburgh.* But, true to Davey's congenial style, he has captivated the Westmoreland County women's market since his first days on WHJB.

Proof? You bet! Take the cookbook contest WHJB recently sponsored with Davey as host. A cookoff was held with prizes for the best recipes. The winning recipes were reproduced in cookbook form. Davey invited his listeners to send for a copy and include 25¢ for handling.

In just 4 short weeks, 6,150 requests poured in. 3,500 from Westmoreland County alone . . . and the remainder from a big plus fringe area surrounding *the entire Pittsburgh market.*

Proof enough? Take advantage of this tremendous market, include Davey Tyson in your radio budget. [Emphasis added.]

A map accompanying the promotional material indicates that 2,185, or more than one-third of the responses to the contest came from Allegheny County, in which Pittsburgh is located.

22. The promotional materials for the station also emphasize the Pittsburgh market. For example:

If you could take our 'Pulse' about now, you might be surprised! It's rising! (Is that good?)

Recent PULSE, INC. rating figures show that WHJB Radio is becoming the No. 1 station in the counties surrounding *the Pittsburgh area.* (What, no #2 appeal?)

Yes sir! WHJB Radio is reaching the 232,000 households in Beaver, Washington and Westmoreland counties, better than any station in Beaver Falls, Butler, Cannonsburg, Latrobe, McKeesport, New Kensington or Washington. (Good thing we're here, huh?)

And . . . in the Monday to Friday PULSE, INC. figures for the *four county Pittsburgh market* in the 6 a.m. to 12 noon time periods, WHJB Radio's rating was surpassed only by the BIG BOYS in *Pittsburgh.* KDKA, WTAE, KQV and WWSW! (That's nice company to be with!)

What's it all prove anyway? Just that WHJB is your best buy for a broadcast message, once your advertising has to step over the Allegheny County line. Why buy a dozen beats when one WHJB Radio pulsebeat will do the job in *suburban Pittsburgh!* (Cause we're in the 'heart' of the listener! WOW!) [Italic added.]

Further emphasizing the Pittsburgh orientation of the station is that, of the *three* telephone numbers available to listeners of "The Davey Tyson Phone Party", *two* are Pittsburgh exchanges. In the event the requested power increase is granted, WHJB indicates that its major programming change will be invitations to leaders and spokesmen from the gain area, *which is primarily Pittsburgh,* to appear on the station "call-in" programs. Since the Tyson program is already heavily oriented toward Pittsburgh, this will only tend to increase the present trend. These policies of station WHJB demonstrate a continued and conscious effort to gain access to the Pittsburgh market at the expense of service to its local community and the present request for a power increase is in keeping with this intent.[28]

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[28] As the Board said in *Naugatuck:*

". . . if a suburban station has and will continue to be truly a station of its named community, such station, like any other licensed broadcast facility is entitled to the benefits of the Commission's general policy of encouraging optimum utilization of the broadcast frequencies." 8 FCC 2d 778, 10 RR 2d at 762.

Thus, no station is entitled, *as a matter of right,* to the maximum authorized power for its class.

23. Finally, the Board has considered the various factors which would mitigate a decision adverse to WHJB on 307(b) grounds and has found none. For example, although WHJB claims that the shape of its radiation pattern (and therefore its coverage of Pittsburgh) results from directionalization to avoid interference with a station in Beckley, West Virginia, only two possible radiation patterns were tested—a 1 kw non-directional which caused interference and the presently proposed pattern. This is not sufficient proof that the applicant had no alternative to coverage of Pittsburgh. The total coverage of Pittsburgh by WHJB's 5 mv/m contour is the direct result of the applicant's decision to seek a power increase instead of redesigning its present directional pattern. Furthermore, no lack of service to the Pittsburgh gain area was demonstrated. Although no definite evidence was introduced, WHJB itself indicates that the Pittsburgh area has ample broadcast services. Therefore no proven reason exists for the power increase other than service to Pittsburgh.

SUMMATION

24. In sum, the power increase requested by WHJB is intended to serve the larger community of Pittsburgh rather than the station's specified community of Greensburg. This conclusion is based on the following: (a) no need for the increase has been shown because WHJB has not proved the existence of significant manmade noise interfering with its signal and the requested power increase is greatly in excess of that needed to provide primary service to all of Westmoreland County since WHJB's engineer stated that a 2.0 mv/m signal could be rendered to the county by a redesign of the present radiation pattern; (b) no demographic comparison of Pittsburgh and Greensburg has been made and no separate and distinct needs of Greensburg or the gain area have been illustrated; (c) it has not been proved by the applicant that Greensburg advertising revenues alone can support the proposal; and (d) the attention now accorded the Pittsburgh market by WHJB appears to be an accurate forecast of a future attempt to concentrate service on Pittsburgh—exactly the type of conduct that the *Policy Statement* attempted to prevent. In view of all the foregoing, the public interest, convenience and necessity would not be served by a grant of the subject application.

25. ACCORDINGLY, IT IS ORDERED, That the petition to amend record *nunc pro tunc* or to reopen record, filed January 6, 1972, by WHJB, Inc., IS GRANTED, to the extent that the record in the proceeding IS REOPENED; that WHJB Radio, a Limited Partnership, IS SUBSTITUTED FOR WHJB, Inc. as the applicant in this proceeding; and that the RECORD IS CLOSED; and

26. IT IS FURTHER ORDERED, That the application of WHJB, Inc. (BP–17962) IS DENIED.

Federal Communications Commission,
Dee W. Pincock,
Member, Review Board.

APPENDIX

Rulings on Exceptions of the Broadcast Bureau

Exception No.	*Ruling*
1	*Granted.* The last sentence of paragraph 19 of the Administrative Law Judge's findings is corrected as requested.
2	*Denied.* The material is relevant in the context of this case; however, as discussed at paragraph 14 of this Decision, WHJB failed to prove that such a need exists.
3, 4, 6	*Granted* in substance. As presently operating WHJB is actively competing for and attracting Pittsburgh area revenues. Operating as proposed, WHJB can be expected to further attract such revenues. See paragraphs 20–22 of this Decision.
5	*Granted* in part and *denied* in part. See paragraph 15 of this Decision.
7	*Granted in substance* for the reasons discussed in paragraphs 3, 7, 8, 17, 18 and 19 of this Decision.
8	*Granted* for the reasons discussed in paragraphs 4–6 of this Decision.
9	*Granted* for the reasons discussed in paragraphs 10 and 11 of this Decision.
10	*Denied.* Paragraph 4 of the Presiding Judge's conclusions is not "irrelevant" to a resolution of the Suburban Community issue.
11, 12	*Granted* in substance. See paragraphs 13, 14 and 23 of this Decision.
13	*Granted* for the reasons stated in the whole of this Decision.

Rulings on "Protective" Exceptions of WHJB, Inc.

Exception No.	*Ruling*
1	*Granted* to the extent that WHJB's engineer qualified as an expert witness and his definition of man-made noise was unchallenged; *denied* in all other respects for the reasons stated in paragraphs 5 and 6 of this Decision.
2	*Denied.* The record does not support the requested findings. See paragraphs 4–8 of this Decision.
3	*Denied* for the reasons discussed in paragraphs 4–7 of this Decision.
4	*Denied* for the reasons discussed in paragraphs 7 and 8 of this Decision.

Separate Concurring Opinion of Board Member Sylvia D. Kessler

1. I concur in paras. 1–8 of the Board's decision relating to the failure of the applicant here to establish that the magnitude of the power increase requested is necessary to overcome alleged man-made noise in Westmoreland County, and in the ultimate ordering clause denying this application. Generally, however, I disagree with the rationale of the Board's decision, particularly that portion set forth in paras. 9–15 dealing with the requirements of the so-called Suburban Community issues, in light of the Court's opinion in *Northern Indiana Broadcasters, Inc.* v. *FCC*, — U.S. App. D.C. —, 459 F.2d 1351, 23 RR 2d 2113 (1972). In that decision the Court referred to prior Commission precedent or "relevant case law—*Jupiter Associates . . . Naugatuck Valley Service . . . Monroeville Broadcasting Company . . .*" and

stated that these cases [1] "do little to clarify the standards of *how* different the separate needs and interests" of the smaller community must be from those of the big city in order to rebut the Commission's Policy Statement. The Court stated that "on the basis of its own murky precedent the Commission could have decided the instant case [*Northern Indiana*] the opposite way without a violent intellectual wrench, a not very satisfactory state of affairs." The Court called for clarification of subissues (a) and (c), and for specification of "what *types* and what *degree* of evidence is required to rebut the Commission's Policy Statement."

2. Despite the foregoing critical observations of the Court, if not its mandate, the Board's opinion here relies on the prior relevant case law which the Court described as "murky", and it also extends that case law. It is further stated in the Board's opinion here, at footnote 15, that "in the present case it would take a *substantial* 'intellectual wrench' to decide this case the other way"; however, this record indicates that this simply is not so. The Administrative Law Judge proposed a grant of the subject application, and a review of the initial decision indicates that he had no difficulty in reaching this result. There is also a dissenting member of this panel of the Board whose separate dissenting statement indicates that he, likewise, has no difficulty in reaching his conclusion that this record warrants a grant of the application. Similarly, if this record reflected an objective evidentiary showing with respect to (a) Greensburg's problems, needs and interests, and (b) this existing station's "unusual sensitivity" [2] in catering to that community's need for local self-expression as shown by its past program performance, and its proposed program proposal,[3]

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[1] *Jupiter, supra,* is reported at 12 FCC 2d 217 (29 March 1968); aff'd. *Jupiter Associates, Inc.* v. *FCC,* 136 U.S. App. D.C. 266, 420 F.2d 108 (1969). *Naugatuck, supra,* is reported at 8 FCC 2d 755 (1967), aff'd *sub nom. Northeast Broadcasting, Inc.* v. *FCC,* 130 U.S. App. D.C. 278, 400 F.2d 749 (1968). *Monroeville, supra,* is reported at 12 FCC 2d 359 (1968), aff'd *sub nom. Miners Broadcasting Co.* v. *FCC,* D.C. Cir. No. 21,937 (1969) (unreported).

[2] *Monroeville, supra,* where the Commission's decision at para. 20 speaks in terms of "above average sensitivity" and "meaningful sensitivity". *Cf. Policy Statement on Comparative Broadcast Hearings,* 1 FCC 2d 393 (1965), wherein the Commission stated that "a past record within the bounds of average performance will be disregarded, since average future performance is expected . . . and the Commission expects every licensee to carry out its proposals." In this statement, the Commission further stated ". . . we shall consider past records to determine whether the record shows . . . *unusual attention* to the public's needs and interests. . . ." (Emphasis supplied.)

[3] In this connection, attention is directed specifically to paras. 17, 18, 22, 23, 24, 27, 32, 34, 36 and 37 of *Naugatuck, supra.* There, para. 17 relates to the activities of the Naugatuck schools requiring greater broadcast coverage; para. 18 relates to the taping of musicals, discussion programs, etc., on behalf of Naugatuck schools; para. 22 relates to the actual broadcast of six to seven school musical concerts; para. 23 relates to adult educational programming; para. 24 to the need for a 30-minute weekly school report; para. 27 relates to the manner in which the station serves Naugatuck industrial needs, and how it proposes to improve its coverage; para. 32 relates to a breakdown of the station's local news by communities, and it is stated that of the local news, "83% pertained to Naugatuck matters, 11% to Waterbury, and 6% to other nearby communities." Footnote 11 also defines local news as encompassing Naugatuck, Waterbury, Prospect, Beacon Falls, Cheshire, Middlebury, and Seymour—the immediate Naugatuck Valley area.

Suffice it to say, the instant Greensburg record is devoid of the meaningful evidence reflected in the *Naugatuck* decision which may be illustrated again by reference to paras. 34 and 36 thereof where there are findings establishing that the Naugatuck station presented on the average seven or eight programs yearly dealing with local matters of a controversial nature on an equal time basis, and where at para. 36 the findings read, as follows:

"In addition to the spot-type of announcements, . . . some 15-minute and longer programs on behalf of local civic organizations [are carried] such as the Lions Club, the Kiwanis, and Rotary. The Rotary program is a yearly one where WOWW [the Naugatuck station] the first Sunday in February, is made available to the Rotary Club for the entire day . . . As a result of this program, a sum of $1,700 was raised one year by the organization. This was used primarily to re-equip a school library which was burned out."

I would experience no intellectual wrench whatsoever in granting this application. Indeed, I believe that if the evidence in this record was adequate in these respects the Policy Statement would compel a grant of this application, as would the crux of the *Naugatuck* decision, *supra*, which, in pertinent part, reads, as follows:

> . . . if a . . . station has and will continue to be truly a station of its named community, such station, like any other licensed broadcast facility, is entitled to the benefits of the Commission's general policy of encouraging optimum utilization of the broadcast frequencies. . . . Here, we have an existing licensee . . . with a prior record which has made a strong and convincing showing based in substantial part, upon its *past record;* in our view that showing adequately rebuts the presumption. . . . (*Italics supplied.*)

3. On the basis of a comparison of (a) my above described simple approach to the Suburban Community policy, and (b) the far more elaborate and difficult requirements spelled out in the Board's decision here as the required showing necessitated by the Suburban Community issues, it is evident that there are irreconcilable conflicts of views in the areas earmarked by the Court for clarification, namely, "what type and what degree of evidence is required to rebut the Commission's Policy Statement", although on the basis of this record, albeit for substantially different reasons, Board Member Pincock and I are both constrained to deny the subject application. Obviously, there are even greater gaps of irreconcilable opinion with our dissenting Board Member Nelson, as shown by his separate statement. Moreover, this irreconcilable conflict of opinion relating to "what types and what degree of evidence is required to rebut the Commission's Policy Statement", does not stop with the participating members of this panel of the Board. There are other and different wide gaps of variable opinion, including that of the applicant, the Commission's Broadcast Bureau, and the Administrative Law Judge, where all, except the Bureau, posit a grant of the subject application.

4. In sum, and without question, there is an existing state of confusion, and when this confusion is considered together with the Court's call for clarification, it is my view that a unique state of affairs is presented which (a) leaves a host of problems challenging the validity of the Board's decision here, and (b) compels Commission review because there are policy questions requiring Commission clarification not only with respect to the Suburban Community issues, *per se*, but also with respect to the interrelationship of the requirements of the more recently adopted *Primer on Community Ascertainment*,[4] on these issues, if not on the Suburban Community policy, *per se*. For these reasons, I would have preferred certification of this case to the Commission. With the backlog of adjudicatory cases in mind, I do not believe that the inordinate time and expense involved in reviewing this case and preparing three separate opinions, has resulted in the orderly and efficient administration and dispatch of the Commission's business. And considering this state of affairs, it may reasonably be stated that there is a likelihood of this same confused and divided opinion in other pending AM cases before the Board involving the Suburban Community policy, as well as in pending FM cases involving similar types of issues.

[4] 27 FCC 2d 650 (1971).

Under these circumstances, I now recommend that the Commission take whatever steps it deems appropriate to clarify [5] this situation involving the Suburban Community policy in order to avoid a waffling of review of these cases, first, by the Board, and, then, by the Commission.

5. Briefly turning to note 3 of Board Member Nelson's dissenting statement, I am compelled to emphasize that, contrary to his view, I am not charging WHJB with inadequate programming. Conversely, I am not holding that WHJB's programming has been adequate or has met the needs of the community, because I deem this record grossly deficient upon which to rest such a conclusion. In any event and more to the point of what I believe to be the *sine qua non* of the Suburban Community policy with respect to an existing station, I am holding that on the basis (a) of the insubstantial evidence WHJB did produce in the context of the relationship of its programming (past or proposed) to Greensburg's problems, needs and interest, and (b) of the total absence of meaningful evidence concerning Greensburg's problems, needs and interest, no determination whatsoever can be made as to whether WHJB's programming (past or proposed) shows "unusual attention" to Greensburg's local self-expression needs. See notes 2 and 3, *supra*. With respect to Board Member Nelson's further observation in note 3 of his dissenting statement that he does not read the Suburban Community issues as encompassing past programming, I merely note, in passing, that (a) he not only participated as a panel member in the Board's decision in *Naugatuck*, *supra*, he and former Board Member Slone comprised the Board's majority which granted that application; and (b) paras. 18–50 of that decision are devoted to a lengthy discourse of findings of fact relating to that station's past programming. And it is on the basis of these copious and detailed findings that they reached the conclusions in *Naugatuck*, *supra*, which have already been quoted *haec verba* at para. 2 above.

6. Perhaps, in light of the more recent *Primer* requirements, *supra*, of the interrelationship of these requirements to the Suburban Community issues, and of the continuing and still evolving principles relating to the functions of the Commission's renewal processes, past programming should not be in issue. If it is not, the question is posed as to whether in the eight-year period since the adoption of the Suburban Community policy, changes in the views of individual Commissioners as membership in the Commission has changed or as Commissioners come to view matters differently with the passage of time, the Suburban Community policy requires changing. However, it is axiomatic that such change must be enunciated by the Commission, for it extends far beyond the jurisdiction of this Board.

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[5] After the Court's decision in *Miners Broadcasting Service, Inc.* v. *FCC*, 121 U.S. App. D.C. 222, 349 F.2d 199 (1965), the Commission held a consolidated type of oral argument, permitting all parties involved in a number of cases to participate. I also note the Dissenting Statement of Chairman Dean Burch in the *El Cajon* case, 29 FCC 2d 370 (1971), where he states that:

"I have some doubts as to the efficacy of our Suburban Community policy, and note that it is coming before us for review. . . . We can require the station not only to continue its present efforts . . . but, since with increased power there should come increased revenues, it can be called upon to do more for El Cajon (in its news, religious, educational, public affairs, etc. efforts). We can obtain detailed reports in this respect at renewal time."

DISSENTING STATEMENT OF BOARD MEMBER
JOSEPH N. NELSON

I would grant the subject application on the grounds that (a) the standards used by the Commission in applying its *Suburban Community* policy have been strongly criticized and found inadequate by the Court of Appeals in its recent decision in *Northern Indiana Broadcasters, Inc.* v. *FCC*, 148 U.S. App. D.C. 327, 459 F.2d 1351, 23 RR 2d 2113 (1972); (b) the standard *Suburban Community* issues framed herein, designed for applications for new stations, do not fit the Greensburg proposal which involves an existing station in a community which is 20 miles from Pittsburgh and which is not a suburb thereof;[1] (c) there is no competing applicant here, no question of an unwarranted 307(b) preference and, thus, one of the major objectives of the policy would not be frustrated by a grant; and (d) a grant would serve the public interest and would not be inconsistent with the intent and purpose of the *Suburban Community* policy statement.

In *Northern Indiana, supra*, (involving a community adjacent to a larger city) the Court of Appeals (a) questioned whether the standards applied by the Commission were "precisely phrased"; (b) stated that the Commission's precedents "leave the next applicant devoid of any guidelines as to the type and degree of evidence required to rebut the Commission's Policy Statement"; (c) stated that the Commission's prior holdings "suggest that on the basis of its own murky precedents the Commission could have decided the instant case the opposite way without a violent intellectual wrench, a not very satisfactory state of affairs"; (d) "pointed out the lack of clarity and resulting difficulty in securing uniformity of application in the FCC standards"; and (e) concluded that it was "*incumbent upon the Commission to clarify the standards* for implementing its Suburban Community Policy Statement, if the latter is to serve as a fair and reasonable means for regulating the grant or denial of requests for licenses to operate radio stations in suburban communities." (Italic added.)[2]

From the above, it may well be urged that, in effect, the Commission's *Suburban Community* policy statement has been suspended by the Court pending clarification of the Commission's standards. In the past, in somewhat similar circumstances, actions in various suburban community cases were held in abeyance pending clarification by the

[1] At the oral argument, the Bureau was unable to cite any case where the *Suburban Community* policy was applied to a station in a community similarly distant from the presumptive larger community.

[2] In a constructive vein, I would point out that the recurring problems discussed by the Court may stem from the fact that certain factual situations do not fit the policy mold; that applying the policy to such situations results in frustrating efforts to put a square peg in a round hole; that the Policy Statement rationale that suburban community stations tend to identify themselves with adjacent larger communities may not be applicable to long established stations operating many miles away from the larger community; that standards and issues applicable to suburban communities *adjoining* larger communities may not be appropriate where such communities are 20 miles apart and involve an existing station (as in the case before us now); that because a station would "incidentally" serve a large community, "incidentally" does not automatically become "realistically"; that a primary objective (improved county coverage) should not be nullified by a secondary effect (penetration of a large community); that conversion of the policy to an exclusionary technique tends to strengthen the monopoly position of the big city stations; and that the end result of the policy is the use of a quantitative engineering slide-rule (5 mv/m signal penetration) to raise a presumption of intended service to a distant city, and at the same time requiring a detailed *qualitative*, socio-economic, evidential showing on the part of an applicant to overcome that presumption.

100-026—73——13

Commission of its standards. The following chronology supports this view: (a) on June 17, 1965, in *Miners Broadcasting Service, Inc.* v. *FCC*, 349 F.2d 199, 5 RR 2d 2086, the Court of Appeals, with criticisms similar in effect to those set forth in *Northern Indiana, supra*, remanded a suburban community case on the grounds, among others, that there was a need for the clarification or establishment of appropriate standards by the Commission; (b) on July 7, 1965, the Commission adopted an Order (1 FCC 2d 319, 5 RR 2d 547) scheduling oral argument on "the question of what standards should be applied" in suburban community cases; (c) the oral arguments were heard on October 8, 1965; and (d) on December 22, 1965, the Commission adopted its *Suburban Community* policy statement (2 FCC 2d 190, 6 RR 2d 1901), setting forth the standards to be applied in suburban community cases. Accordingly, similar Commission proceedings are required before a denial of WHJB's application will meet the Court's mandate. In any event, it is my view that the question of suspension of the Commission's Policy Statement does not require resolution now because, on the basis of this record, a grant of the subject application would not only serve the public interest but also would be consistent with the intent and purpose of the Commission's *Suburban Community* policy.

The essentials of the instant factual situation are simple and clear-cut. Greensburg, the *county seat* of Westmoreland County, is located about 20 miles from Pittsburgh. Station WHJB has been regularly licensed by the Commission to operate in Greensburg *since 1934*.[3] It is the only fulltime standard broadcast station in Westmoreland County, transmitting on 620 kHz, 500 w, 1 Kw–LS, DA–2, Class III. Although the station's present 2.0 mv/m contour serves 15% of the Pittsburgh area and population,[4] it *does not cover all of Westmoreland County;* excluded therefrom are such urban areas as the communities of Monessen (pop. 18,424), North Belle Vernon (pop. 3,148) and West Newton (pop. 3,982). Further, because of the erection of water towers and power lines and the building up of rural areas, additional *county* coverage problems were encountered.[5] Thus, WHJB's proposal to operate with 5 kw would place a 2.0 mv/ signal over all of Westmoreland County and is designed to improve its service to the county.[6] The fact that Pittsburgh is 20 miles away does not detract from the station's motivation. It means, simply, that WHJB would "incidentally" increase its penetration of Pittsburgh rather than "realistically" becoming a Pittsburgh station. As a Class III station, WHJB is eligible

[3] As I read the issues, they call for a showing as to WHJB's *prospective* programming. If, as the Concurring Statement, for the first time in this case, indicates, WHJB's past programming is in issue, then it must be pointed out that the Broadcast Bureau, the Initial Decision, the Board's Decision herein and the Commission have all found that WHJB's programming has been meeting the needs of its service area and has been in the public interest. Thus, at no time has WHJB had the need or the opportunity to defend itself against a charge of inadequate programming.

[4] Ironically, the Court of Appeals stated in *Miners Broadcasting, supra*, ". . . The Commission must state the relevance of the difference between service to one-third of Pittsburgh and service to 98 per cent of it or make additional findings of fact in support of its determination."

[5] Many complaints were received from listeners.

[6] Since WHJB commenced operation, service to Westmoreland County has taken on added significance *vis-a-vis* Greensburg. The county population has risen from 294,995 (1930 Census) to 377,079 (1970 Census), while Greensburg's population for those years has fallen from 16,508 to 15,870.

to request and operate with 5 kw power since it could not apply for less power under the rules. As stated by the Commission "Class III stations broadcast with a maximum power of five kilowatts and are intended to serve a particular city and the rural area in the region around the city." *Amendment of AM Station Assignments*, FCC 63–468, 25 RR 1615.[7] In light of the above, I do not believe that the happenstance location of Pittsburgh should block a grant of a proposal which is consistent with the Commission's Rules and which evidences obvious benefits and no detriments.

Finally, some comment is warranted with respect to the position of the Bureau and the Decision herein that while WHJB has made a satisfactory showing under the *Suburban* issue, it has failed to do so under the *Suburban Community* issue. A careful analysis of those issues indicates that the major requirements of both can be met substantially by the same evidential showing. In the instant case, having met fully the *Suburban* issue, and having shown estimated *local* revenues of 76.7% and no increase in Pittsburgh revenues (14.6%), WHJB may well urge that, on the basis of the above facts alone, it should be concluded that it has complied *substantially* with the requirements of the *Suburban Community* issue.

[7] The non-applicability of a policy because of distance has been recognized by the Commission in its *Primer on Ascertainment of Community Problems*, 27 FCC 2d 650, 21 RR 2d 1507 (1971), where the Commission stated that "no major city more than 75 miles from the transmitter site need be included in the applicant's ascertainment, even if the station's service contours exceed that distance." This limitation was adopted in deference to Class I AM stations (50 kw) which are designed to provide primary and secondary service to very large areas. Thus, as a Class III, 5 kw station, intended to serve a particular city (Greensburg) and the rural areas around the city (Westmoreland County), WHJB should not, realistically, be presumed or expected to serve Pittsburgh—20 miles away—which has numerous AM, FM and TV stations.

F.C.C. 71D-57

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WHJB, INC., GREENSBURG, PA. For Construction Permit	Docket No. 18868 File No. BP-17962

APPEARANCES

Isadore G. Alk, Esq., on behalf of WHJB, Inc., Greensburg, Pennsylvania; *Jay L. Witkin, Esq.*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ERNEST NASH

(Issued August 26, 1971; Released September 1, 1971)

PRELIMINARY STATEMENT

1. WHJB, Inc., licensee of WHJB, Greensburg, Pennsylvania, has applied for an increase of daytime power from 1 kw to 5 kw. In a Memorandum Opinion and Order, FCC 70-547, released May 27, 1970, the Commission designated the application for hearing on the following issues:

1. To determine whether WHJB, Inc., is financially qualified to construct and operate its proposed station.

2. To determine whether the instant proposal will realistically provide a local transmission facility for its specific station location or for another larger community, in the light of all the relevant evidence, including, but not necessarily limited to, the showing with respect to:

(a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programming needs;

(b) The extent to which the needs of the specified station location are being met by existing aural broadcast stations;

(c) The extent to which the applicant's program proposal will meet the specific unsatisfied programming needs of its specified station location; and

(d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

3. To determine the efforts made by WHJB, Inc., to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

4. To determine, in the light of evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience and necessity.

WTRA Broadcasting Company, licensee of Station WTRA, Latrobe, Pennsylvania, was made a party to the proceeding.

2. Prehearing conferences were held on July 8, September 15, and October 15, 1970. Hearings were held on January 13 and February 8,

1971. The record was closed on February 8, 1971. WTRA did not appear or otherwise participate in any of the proceedings.

FINDINGS OF FACT

3. The net cost of the transmitting equipment to be installed is $19,383.86. Installation costs are estimated at not to exceed $6,000.00. In order to finance the cost of acquiring and installing the new transmitting equipment, WHJB has received a loan commitment from the Pittsburgh National Bank in the sum of $40,000. The loan will carry an interest rate of 1% above the primary rate at the Pittsburgh National Bank and will be repayable in installments not to exceed $500.00 per month during the first year. Repayments on the loan will be made from operating revenues and from a cash reserve in excess of $10,000 maintained in a checking account at Pittsburgh National Bank. Revenues of WHJB during 1968, 1969 and 1970 have substantially exceeded operating costs. In addition, Melvin A. Goldberg, president of WHJB, has committed himself personally to make available to the station such additional funds as the station may require during its first year of operation of the new facilities. Goldberg has current assets in the form of cash, cash surrender value of insurance policies in excess of $35,000. His current income is adequate to satisfy his current liabilities and monthly payments on long-term loans.

4. Operating expenses, in the event the application to increase power is granted, are expected to increase as follows:

Increase in technical expense	$1,800.00
Additional programming cost	10,000.00
Additional selling, general and administrative costs	7,000.00
Interest expense	3,200.00
Total	22,000.00

5. Existing revenues, together with the funds to be made available from the Pittsburgh National Bank and, if necessary from Goldberg, will be adequate to cover the transmitter cost, cost of installation and increased operating costs. It is reasonable to anticipate that additional revenues will be derived in the event of the increase in power. Total estimated revenues are $369,930.00 as compared to operating costs of $332,700.

Suburban Community Issue (Issue 2)

A. Engineering Considerations

6. Radio Station WHJB has been licensed to Greensburg, Pennsylvania, since 1934. Its latest license renewal was granted by the Commission on July 24, 1969.

7. Greensburg is located about in the center of Westmoreland County, at the junction of U.S. Routes 30 (E/W) and 119 (N/S) and Pennsylvania Routes 66 (N/S), 130 (E/W), 136 (N/S) and 819 (N/S). The New Stanton Interchange of the Pennsylvania Turnpike and Interstate 70 (E/W) is six miles south via U.S. Route 119, and the Irwin Interchange of the Pennsylvania Turpike is eight miles

west via U.S. Route 30. Adjoining it are the boroughs of South Greensburg and Southwest Greensburg. Surrounding these three communities is the township of Hempfield. Together they comprise the area known as Greater Greensburg.

8. Together with the city of Jeannette and the boroughs of Manor, Penn, Adamsburg, Arona, Madison, Hunker and Youngwood, Greater Greensburg forms an enclave within and at the easterly peripheral end of the Pittsburgh Urbanized Area, separated from the main segment by a substantial rural area and the Pennsylvania Turnpike. This enclave encompasses an area of 90.6 square miles. The enclave had a total population of 76,218 in 1960 and 96,949 in 1970.

9. The population of Greater Greensburg is shown by the 1960 Census and the official 1970 Advance Report to be as follows:

	1960	1970
Greensburg	17,383	15,870
South Greensburg	3,058	3,288
Southwest Greensburg	3,264	3,186
Hempfield Township	29,704	39,196
	53,409	61,540

B. Technical Considerations

10. WHJB, Inc., proposes to change the facilities of Station WHJB, Greensburg, Pennsylvania, which now operates as a Class III station, unlimited time, on 620 kHz with one kilowatt power daytime and 500 watts power nighttime, employing different directional antennas day and night. The daytime power would be increased to five kilowatts and the daytime directional antenna pattern would be modified.

11. Greensburg city has a 1960 population [1] of 17,383 and a preliminary 1970 population [2] of 16,771. It is the county seat of Westmoreland County and is a part of the Pittsburgh Urbanized Area and the Pittsburgh Standard Metropolitan Statistical Area, the latter of which is comprised of Allegheny, Beaver, Washington and Westmoreland counties. The community lies approximately 20 miles southeast of Pittsburgh at the closest limits and 26 miles from downtown Pittsburgh. It is adjoined on the southwest by Southwest Greensburg borough and on the south by South Greensburg borough. Jeannette city lies 2.4 miles to the northwest at the closest limits. The area surrounding Greensburg is the urban township of Hempfield. The various areas contain the following population:

[1] Unless otherwise specified, 1960 U.S. Census data are used throughout. Figures were taken from 1960 U.S. Census data, Vol. 1, pp. 40–22 to 40–49.

[2] Figures were taken from Preliminary Reports, 1970 U.S. Census of Population, Pennsylvania, October 1970, PC (P1)–40 and PC (P2)–156.

Area	1960 population	Preliminary 1970 population
Westmoreland County	352,629	377,079
Pittsburgh Urbanized Area	1,804,400	----------
Pittsburgh Standard Metropolitan Statistical Area	2,405,435	2,383,753
Southwest Greensburg Borough	3,264	3,142
Jeannette City	16,565	15,073
South Greensburg Borough	3,058	3,226
Hempfield Township	29,704	40,036
Pittsburgh City	604,332	512,789
Allegheny County	1,628,587	1,591,270
Beaver County	206,948	205,998
Washington County	217,271	209,406

12. Station WHJB is the only fulltime standard broadcast station in Westmoreland County. The following standard broadcast (AM) and FM broadcast stations are located in Greensburg or elsewhere in Westmoreland County:

Station	*Location (all in Pennsylvania)*
AM:	
WHJB, 620 kHz, 500 w, 1 Kw–LS, DA–2, U, Class III	Greensburg (applicant).
WQTW, 1570 kHz, 1 Kw, D, Class II	Latrobe.
WTRA, 1480 kHz, 500 W, D, Class III	Latrobe.
WKPA, 1150 kHz, 1 Kw, DA–D, Class II	New Kensington.
FM:	
WOKU–FM, 107.1 MHz, 3 Kw(H), 2.95 Kw (V), 300 ft., Class A.	Greensburg (applicant's station).
WNUF, 100.7 MHz, 20 Kw (H&V), 460 ft., Class B	New Kensington.

Pittsburgh, in Allegheny County, has 8 AM, 11 FM and 7 TV stations.

13. A study was made by the applicant's consulting engineer to determine if the facility could operate with a power of 1,000 watts non-directional in order to improve the County coverage since the facility lies generally in the middle of the county. The only allocation problem that was presented by 1,000 watt nondirectional operation was co-channel interference to Station WWNR, operating on 620 kHz in Beckley, West Virginia. A series of field intensity measurements were taken to show what the allowable radiation would be in this direction toward the southwest. The measurements showed that non-directional operation would not be possible.

14. Thereupon, a five kilowatt directional design was studied by the consulting engineer to see what improvement could be made in all directions with respect to Westmoreland County. As shown by the design limitations, a substantial improvement in service would result in all directions from WHJB site, except to the southwest in the direction of Beckley, West Virginia, where only a modest increase would be permissible and to the southeast where a loss in rural service would occur. In order to confine the 5,000 watt energy within the design limitations to the north, northeast, east, southeast, south and southwest, the balance of the antenna radiated power had to be

directed to the northwest in order to arrive at a design to meet the minimum efficiency of 392 mv/m RMS for five kilowatts power. However, the applicant's consulting engineer conceded that it is possible to redesign the present radiation pattern so that a 2.0 mv/m signal can be rendered to all of Westmoreland County employing a power of one kilowatt.

15. Primary service is presently provided within the WHJB 0.5 mv/m contour to 1,523,087 persons in an area of 8,135 square miles. Under the proposed operation, this would be increased to 3,771,665 persons [3] in an area of 15,949 square miles. A total of 2,255,730 persons in an area of 8,026 square miles would gain WHJB primary service and 7,152 persons in an area of 212 square miles located in rural areas 53 to 74 miles southeast of Greensburg in Maryland would lose it. Thus, there would be a net gain in service to 2,248,578 persons in an area of 7,814 square miles. The following stations provide primary service (0.5 mv/m or greater) to the proposed WHJB loss area:

Station [4]	Location	Percentage of area served
WMBS	Uniontown, Pa.	60
KDKA	Pittsburgh, Pa.	75
WCUM	Cumberland, Md.	90
WTBO	Cumberland, Md.	90
WUOK	Cumberland, Md.	100
WBFD	Bedford, Pa.	25
WVSC	Somerset, Pa.	100

[4] Although no contour map was submitted to support this tabulation, it is noted that three stations (2 AM and 1 FM) cover 100% of the area.

From 5 to 7 AM stations provide primary service to any one portion of the loss area. In addition, one FM station, namely, WKGO in Cumberland, Md., provides 1.0 mv/m service to all of the loss area. The 2.0 mv/m urban gain area includes some 70 cities of over 2,500 persons located in eleven counties.[5] The cities have a total population of 1,127,791 persons. Including urbanized areas, the urban total is increased to 1,363,462 persons.[6]

16. The present 25 mv/m contour of Station WHJB falls 14.5 miles southeast of the nearest city limit of Pittsburgh and the proposed 25 mv/m contour falls 1.5 miles short of the city.

17. Applicant's engineer stated that Westmoreland County is a manufacturing and industrial area where high signal levels are desirable in order to overcome man-made noise. However, he submitted no

[3] Cities of 2,500 or more persons and urbanized areas not receiving a 2.0 mv/m signal were excluded.

[5] The counties are: Butler, Lawrence, Beaver, Washington, Allegheny, Armstrong, Indiana, Cambria, Somerset, Fayette, and Westmoreland.

[6] There would be an expansion of 2.0 mv/m service from 903,386 persons in 2,501 square miles to 2,952,928 persons in 5,342 square miles; an expansion of 5.0 mv/m service from 237,884 persons in 916 square miles to 2,145,346 persons in 2,469 square miles; and an expansion of 25 mv/m service from 68,529 persons in 98 square miles to 323,865 persons in 338 square miles. Since rural areas are included in the 2.0 mv/m figures, and urban and rural areas are included in the 5.0 mv/m and 25 mv/m figures, the respective increases do not represent gains in primary service.

detailed evidence on the extent and location of such areas. A total of 69,322 persons would be included within the 25 mv/m gain area in Westmoreland County. This includes 10,470 persons in cities or boroughs of over 2,500 persons, 26,711 persons in unincorporated urban areas and 6,206 persons in boroughs of less than 2,500 persons, the remainder residing in rural areas. Because urban and rural figures are mixed, no weight can be given to them since the 25 mv/m contour is pertinent only to the business and industrial areas of the city of the applicant under Section 73.188(b)(1) of the Rules. Furthermore, a signal intensity of only 2.0 mv/m is required for primary service to urban areas and 0.5 mv/m to rural areas (See *S & W Enterprises, Inc.*, 37 FCC 220, 221, para. 4; *Courier-Journal* and *Louisville Times Co.*, 5 RR 348, 362, 367; *Moline Broadcasting Corp.*, 5 RR 466, 468; *Belle City Broadcasting Co.*, 5 RR 826A, 831.

18. The present 5.0 mv/m contour of Station WHJB falls 6.5 miles southeast of the nearest city limit of Pittsburgh and the proposed 5.0 mv/m contour covers the entire city, extending about 9.5 miles west of the city.[7] Thus, presuming the city of Pittsburgh as the applicant's community, the proposed operation would meet the requirement of Section 73.188(b)(2) of the Rules in that a minimum field intensity of 5 to 10 mv/m would be obtained over the most distant residential section.[8] Applicant's engineer stated that this was unavoidable in the design of the proposed 5,000 watt daytime directional antenna since there was no other direction to radiate the surplus power without causing or receiving prohibitive overlap from an existing co-channel or adjacent channel station and that as much of the power as possible was radiated in all other directions in the design of the antenna system.[9] At the present time, the 2.0 mv/m contour of Station WHJB includes 15% of the population of Pittsburgh.

19. The present directional antenna system projects the major lobe of its radiation pattern toward the southeast and the proposed facility projects its major lobe of radiation toward the northwest in the direction of Pittsburgh holding radiation to the southeast close to its present value. The following tabulation shows the extensions of the present and proposed 5.0 mv/m and 2.0 mv/m contours in various directions:

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[7] The proposed 5.0 mv/m gain area would include six counties, namely, Westmoreland, Allegheny, Beaver, Washington, Indiana and Armstrong and some 100 communities of 2,500 or more persons, each community having a population of less than 50,000 persons. The 25 mv/m gain area would include some 20 of these communities and substantial portions of about 5 others, all located in Westmoreland County or the eastern portion of Allegheny County.

[8] Section 73.188(b)(2) reads in pertinent part as follows:

(b) The site selected should meet the following conditions:

(2) A minimum field intensity of 5 to 10 mv/m will be obtained over the most distant residential section.

[9] A total of 95,243 persons would be included within the 5.0 mv/m gain area in Westmoreland County. This includes 60,515 persons in the cities or boroughs of over 2,500 persons, 1,485 persons in the urban town of Hempfield, and 8,596 persons in boroughs or towns of less than 2,500 persons, the remainder residing in rural areas. No weight can be given to this data because the 5.0 mv/m contour is only pertinent to the residential areas of the applicant's community under Section 73.188(b)(2) of the Rules. Furthermore, a signal intensity of only 2.0 mv/m is required for primary service to urban areas and 0.5 mv/m to rural areas.

Direction	Distance to 5.0 mv/m Contour (miles)		Distance to 2.0 mv/m Contour (miles)	
	Present	Proposed	Present	Proposed
North	20	30	32	43
Northeast	11	23	22	32
East	20	27	33	39
Southeast	25	24	42	38
South	16	16	28	28
Southwest	8	16	16	21
West	15	33	24	50
Northwest	15	46	29	67

Toward the southeast, the two contours encompass substantially rural areas in southern Pennsylvania and northwestern Maryland. In a northwesterly direction, the two contours cover substantial urban areas. The present 5.0 mv/m contour covers the eastern part of the Pittsburgh Urbanized Area but falls short of Pittsburgh and the proposed 5.0 mv/m contour encompasses most of the Pittsburgh Urbanized Area extending as far to the northwest as Ambridge-Aliquippa, Pa. The present 2.0 mv/m contour intersects the eastern part of Pittsburgh and covers all of the Pittsburgh Urbanized Area extending to the northwest to a point beyond New Castle, Pennsylvania.

20. The present 0.5 mv/m contour of Station WHJB covers all of Westmoreland County and the present 2.0 mv/m contour covers all of the urban areas in the county except the communities of Monessen (Pop. 18,424), North Belle Vernon (Pop. 3,148) and West Newton (Pop. 3,982). Thus, of the total county population of 352,629 persons, 327,075 persons receive primary service from the present operation of Station WHJB. This represents 92.7% of the total population of the county. The proposed 2.0 mv/m contour would cover all of the county. Thus, all of the county would receive primary service from the proposed operation. The applicant's consulting engineer stated that there are five or more 2.0 mv/m services available to the gain area in Westmoreland County which comprises the above three communities.

21. The following standard broadcast stations serve Greensburg with a signal intensity of 2.0 mv/m or greater daytime:

Station	*Location (all in Pennsylvania)*	*Station*	*Location (all in Pennsylvania)*
WQTW	Latrobe.	WEEP	Pittsburgh.
WTRA	Latrobe.	WPIT	Pittsburgh.
WAVL	Apollo.	WHJB	Greensburg.
WMBS	Uniontown.	WEDO	McKeesport.
KDKA	Pittsburgh.	WIXZ	McKeesport.

The following FM broadcast stations serve Greensburg with a signal intensity of 1.0 mv/m or greater:

Station	*Location (all in Pennsylvania)*	*Station*	*Location (all in Pennsylvania)*
WJAC–FM	Johnstown.	WPIT–FM	Pittsburgh.
WNUF	New Kensington.	WTAE–FM	Pittsburgh.
KDKA–FM	Pittsburgh.	WWSW–FM	Pittsburgh.
KQV–FM	Pittsburgh.	WYDD(FM)	Pittsburgh.
WAMO–FM	Pittsburgh.	WOKU–FM	Greensburg.
WEEP–FM	Pittsburgh.	WLOA–FM	Braddock.
WJAS(FM)	Pittsburgh.		

The following standard broadcast stations serve Pittsburgh with a signal of 2.0 mv/m or greater daytime:

Station	*Location (all in Pennsylvania)*	*Station*	*Location (all in Pennsylvania)*
KDKA	Pittsburgh.	WTAE	Pittsburgh.
KQV	Pittsburgh.	WWSW	Pittsburgh.
WAMO	Pittsburgh.	WHJB	Greensburg.
WARO	Canonsburg.	WARO	Canonsburg.
WEDO	McKeesport.	WZUM	Carnegie.
WEEP	Pittsburgh.	WIXZ	McKeesport.
WJAS	Pittsburgh.	WPSL	Monroeville.
WLOA	Braddock.	WKPA	New Kensington.
WPIT	Pittsburgh.		

The following FM broadcast stations serve Pittsburgh with a signal intensity of 1.0 mv/m or greater:

Station	*Location (all in Pennsylvania)*	*Station*	*Location (all in Pennsylvania)*
WDKA–FM	Pittsburgh.	WPIT–FM	Pittsburgh.
KQV–FM	Pittsburgh.	WTAE–FM	Pittsburgh.
WAMO–FM	Pittsburgh.	WWSW–FM	Pittsburgh.
WDUQ(FM)	Pittsburgh.	WYDD(FM)	Pittsburgh.
WEEP–FM	Pittsburgh.	WNUF(FM)	New Kensington.
WJAS–FM	Pittsburgh.	WLOA–FM	Braddock.
WKJF(FM)	Pittsburgh.		

22. WHJB's consulting engineer submitted data relative to noise level in Westmoreland County; he stated that the present WHJB facility does not provide 2.0 mv/m daytime coverage to all of Westmoreland County. Because of the random and many-time pulsing character of the radio noise, a desired to undesired ratio of at least 30 to 1 was observed to be required before the noise was objectionable to the program content. The proposed operation would result in interference-free service being rendered to all of Westmoreland County.

23. In connection with the above, it is noted that the portion of Westmoreland County in the extreme northeast corner outside the present 2.0 mv/m contour is entirely rural and does not require a 2.0 mv/m signal for primary service. The pertinent part of the county not within the present 2.0 mv/m contour lies in the southwest corner and includes the communities of West Newton, Monessen and North Belle Vernon. West Newton has a 1960 population of 3,982 (Preliminary 1970 pop. 3,647), Monessen has a 1960 population of 18,424 (Preliminary 1970 pop. 15,066) and North Belle Vernon has a 1960 population of 3,148 (Preliminary 1970 pop. 2,912).

24. Spot field intensity and noise measurements were taken by the applicant's consulting engineer in or near the two communities of Seward (pop. 754; Preliminary 1970 pop. 716) and New Florence (pop. 958; Preliminary 1970 pop. 943) located in the northwestern corner of Westmoreland County and in the three communities of Monessen, North Belle Vernon and West Newton in the southwestern corner of the county.

25. However, these spot field intensity measurements are not acceptable for determining the location of a contour or for determining the extent of primary service. Moreover, even assuming that they were

acceptable in this instance, at most of the locations either the signal intensity from the proposed operation would not reach primary service level or it would not be of sufficient magnitude to overcome the noise level under the assumed signal to noise ratio of 30 to 1. Furthermore, in connection with the noise measurements, standards have not been established for interference from atmospheric or manmade electric noise because there is no uniform method of measuring noise or static.

26. According to the applicant's engineer, David L. Steel, several years ago, Lyle Allen, the Chief Engineer of Station WHJB, contacted him and inquired as to whether the area of reception of the station could be increased by such means as letting out the nulls in the present directional antenna pattern, by operating non-directionally with 1,000 watts power, or by increasing power to 5,000 watts. Steel also stated that Allen expressed the station's desire to improve its service to Westmoreland County. Theoretical studies were then undertaken by Steel, and Allen took field intensity measurements on existing stations. It was determined that the present nulls could not be let out as much as theoretical studies indicated, and that non-directional operation with 1,000 watts power was not feasible. Steel then advised Goldberg that it was possible to increase power to 5,000 watts and to increase the signal to the southwest and substantially to the northwest, but that additional field intensity measurements on existing stations would be necessary.

27. Goldberg testified that "signal problems" were caused by the fact that the area in the vicinity of the station had been built up; that water towers had been erected; and that power lines had been installed. He also said that Steel was never specifically instructed to increase the signal intensity in the direction of Pittsburgh. Nevertheless, Goldberg acknowledged that he never asked Steel to remedy these "signal problems" of the present facility at its present power. Instead, he conceded that his concern had been with an increase in power.

C. Separate and Distinct Needs of Greensburg

28. The city of Greensburg is an independent community with a history dating back to about 1770. Since December 10, 1785, it has been the county seat of Westmoreland County.

29. Greensburg is governed by a Commission consisting of a mayor and four councilmen. The municipalities comprising the Greater Greensburg area cooperate on mutual problems such as schools, sewage disposal, fire protection and the like.

30. Greensburg, South Greensburg and Southwest Greensburg have merged with the neighboring Salem Township to form the Greensburg Salem School District. Hempfield Township, together with the small boroughs of Adamsburg, Hunker, Manor and Youngwood comprise the Hempfield Area School District. The two school districts comprise the largest part of the Central Westmoreland Region. The school districts are completely independent of Pittsburgh and have their own distinct needs for a transmission and reception broadcast service—needs which are primarily met by Radio Station WHJB and its sister FM station WOKU–FM.

31. Within the school districts are two senior high schools, four junior high schools and twenty-six elementary schools with a total enrollment of approximately 12,000 students. Plans are underway for constructing another junior high school in Greensburg Salem School District and two new junior high schools in the Hempfield Area School District. The two school districts have united with other districts in establishing the Central Westmoreland Area Technical School at Youngwood, which has an enrollment of about 640 and a faculty of 15.

32. In addition to the public school system, the Roman Catholic Diocese of Greensburg operates a school system consisting of five elementary schools and one high school. The Diocesan High School, while located in Greensburg, serves all parishes in the Diocese.

33. Seton Hill College, a fully accredited liberal arts college for women, has a campus located in Greensburg and an enrollment of about 760, with a full-time faculty of 65. About seven years ago, the University of Pittsburgh, now a state related institution, opened a Greensburg campus offering two years of study. Enrollment now numbers about 900 and is expected to reach 1,200 within the next two years. St. Vincent's College, a liberal arts college for men, with an enrollment of about 1,000, is located about eight miles east of Greensburg. Plans have been formulated to establish Westmoreland County Community College, to begin operation early in 1971 at a site in Greensburg.

34. Greater Greensburg has a combined police force of 34 policemen, with six radio equipped cars and 25 trained auxiliary police officers. There are 20 volunteer fire companies and a municipal garbage collection system. There is a common control system for all police and fire companies. Greensburg is the headquarters for Squadron No. 1 and Troop A of the Pennsylvania State Police.

35. Greensburg is completely separate from and independent of Pittsburgh in respect to civic and fraternal organizations, recreational facilities, cultural activities and the like. The Westmoreland Museum of Art, located in Greensburg, presents a year-round program of cultural events and exhibits. The community has two movie theaters and a civic theater at which summer stock shows are presented in addition to community concerts. The Garden and Civic Center has completed a million dollar facility which houses garden clubs, a little theater group provided with a "little theater" or auditorium, as well as the Greensburg College Club. Westmoreland County has its own symphony located in Greensburg. The symphony was established in 1969 and is made up of residents of the County. The center is available to all civic organizations in the Central Westmoreland County area.

36. Greensburg has its own hospital with 305 beds and an accredited school of nursing. The Greensburg Public Library serves and is supported by Greensburg and the surounding communities, including the Hempfield Area School District. It contains about forty-five thousand volumes and has an annual circulation exceeding one hundred sixteen thousand. The city has three hotels, with over 225 rooms, and five motels. It has its own daily newspaper with a circulation in excess of 27,000.

37. The Greensburg area Chamber of Commerce is independent of Pittsburgh. The Central Westmoreland Chamber of Commerce,

incorporated in July 1965, represents a consolidation of the former Greater Greensburg, Jeannette and Irwin Chambers and serves 324 square miles of the county. It maintains two offices—one in Greensburg and the other in Jeannette. There are over twenty-five benevolent and fraternal organizations in Greensburg and a variety of business, civic and professional organizations. In addition, there are a number of health and welfare, labor, patriotic, veteran, religious and charitable organizations. Presently underway is a program to enlarge and refurnish the Greensburg YMCA at a cost in excess of one million dollars. The YMCA has a membership of 800.

38. Charity drives are completely independent of Pittsburgh. The United Funds of Central Westmoreland, which covers Greensburg, Youngwood and Mt. Pleasant, is one of the nine united funds and community chests in Westmoreland County which since 1966 have been constituent members of the United Funds of Westmoreland County, Inc. The total goal for the United Funds of Westmoreland County, Inc., and its nine constituent funds for 1971 (Fall 1970 campaign) is $910,526. In addition to the local agencies served by the nine constituent funds, funds will be allocated for the use of agencies operating throughout the entire Westmoreland County. The headquarters of the United Funds of Central Westmoreland is in Greensburg, while an office of the United Funds of Westmoreland County, Inc., is also located in Greensburg.

39. Greensburg is not dependent on Pittsburgh for its water, gas, electricity, telephone service or sewage disposal. It receives its water from the Westmoreland County Municipal Authority. The West Penn Power Company, the electrical utility serving many sections of western Pennsylvania, has its central headquarters at Greensburg. The Peoples Natural Gas Company, a subsidiary of Consolidated Natural Gas Company, serves the entire Greater Greensburg area. Also, Columbia Gas Company serves part of the area. Likewise, the Bell Telephone Co. of Pennsylvania has a large sectional office in Greensburg. The Greater Greensburg Sewage Authority operates the sewage disposal facilities. Greensburg has a main post office and is a sectional center, serving 76 offices. The local post office facilities serve 13,800 families. Greensburg is served by the Penn Central Railroad, seven motor freight carriers and four inter-city bus lines.

40. Greensburg is not a suburb of Pittsburgh nor is it a "bedroom community". Industry in Greensburg and its environs is highly diversified and is primarily of the light industrial type. The city is primarily known as a business, banking and commercial center. It is classified by Rand McNally as a principal business center with a well defined tributary area. The estimated population of the trading area as compiled by the Central Westmoreland Regional Planning Commission is in excess of 260,000. The 1963 Census of Business confirms that it is a substantial commercial and industrial center. There are a total of 45 manufacturing plants located in Greensburg, with an annual payroll in 1963 of $10,211,000. The values added by manufacture in 1963 aggregated $15,293,000. Its manufactures include clothing, steel, fabricating metals, machinery, glass and electrical instruments.

Among the major concerns in Greensburg and its environs employing over 100 persons are the following:

Bell Telephone Co. of Pennsylvania	Telephone System.
Crown Corrugated Containers, Inc	Corrugated Cartons.
Gibson Electric Co	Electrical Contractors.
International Paper Co	Corrugated Fiber Board Boxes.
Leonard Bros. Motor Freight	Freight Transportation.
Old Republic Ins. Co	Insurance.
Overly Mfg. Co	Sheet Metal Products.
Overmyer Mold Co	Glass Forming Molds.
Pittsburgh Plate Glass Co	Replacement Windshields.
ITE Circuit Breaker Co	Electric Controls & Switch Gears.
Peoples Natural Gas Co	Natural Gas.
Robertshaw Controls Co	Thermostats & Controls.
Sears-Roebuck & Co	Department Store.
A. E. Troutman Co	Department Store.
Walworth Co	Valves and Fittings.
Westinghouse Electric Co	Transistors & Rectifiers.
Westland Mfg. Co	Women's Sportswear.
Westmoreland Hospital Association	General Hospital.
West Penn Power Company	Electric Utility.

41. According to the 1967 Census of Business, there are located in Greensburg a total of 334 retail establishments with an annual payroll of $10,649,000 and annual sales of $81,823,000. There are 48 wholesale establishments with an annual payroll of $2,767,000 and annual sales of $29,128,000. A total of 199 selected service establishments with an annual payroll of $2,386,000 had annual receipts of $9,652,000. Greensburg ranks first in Westmoreland County in retail and wholesale trade.

42. The continued commercial and industrial growth of Greensburg itself and of Greater Greensburg as a whole is evidenced by a comparison of the 1967 Census of Business with the 1963 and 1958 Censuses as shown by the following summary.

	1958	1963	1967
Retail trade sales:			
Greensburg	$55,461,000	$65,784,000	$81,823,000
Greater Greensburg	69,648,000	86,804,000	104,477,000
Values added by manufacturing:			
Greensburg	8,077,000	15,293,000	(*)
Greater Greensburg	14,917,000	25,612,000	(*)
Wholesale trade sales:			
Greensburg	20,693,000	38,196,000	29,128,000
Greater Greensburg	32,399,000	66,859,000	(*)
Selected services receipts:			
Greensburg	4,704,000	4,905,000	9,652,000
Greater Greensburg	5,803,000	8,133,000	12,754,000

*Not available.

43. According to Standard Rate & Data Service, total retail sales in the Greensburg trading area totalled $358,952,000 in 1960 as compared to $467,192,000 in 1966, a gain of 30.2%. Consumer spendable income in the trading area was estimated at $594,059,000 in 1960 as compared to $777,059,000 in 1966, a gain of 30.8%.

44. The Greater Greensburg Industrial Development Corporation, a non-profit organization governed by a board of eleven trustees, has its headquarters in Greenburg. The Corporation was established to

increase the industrial growth of the Greensburg area and promotes the 92-acre Greensburg-Hempfield Industrial Park. A master plan for the development of the Greater Greensburg Area has been provided by the Central Westmoreland Regional Planning Commission. It sets forth the method for providing neighborhood and community facilities for residential, industrial and commercial areas to meet growth during the next twenty years.

45. Greensburg has four banks with eight offices and one savings and loan association. It has over fifty churches as well as one synagogue and one temple. It has a full complement of lawyers, doctors, dentists and other professional men. As the county seat of Westmoreland County, it houses the county courthouse with the county offices as well as the Court of Common Pleas and the Orphan's Court. It operates two parking garages and three parking lots and is now floating a $1,125,000 bond issue to construct a new 403 space parking garage of the ramp type to be located in Greensburg.

46. Greensburg maintains several parks and recreational areas, together with a public eighteen hole golf course, championship tennis courts, baseball and softball fields, community swimming pool, and indoor ice and roller skating rink and teenage center. The municipal government and the school board support extensive recreation programs with numerous supervised playgrounds and tot lots. There are also two private golf clubs and several privately operated public golf courses in the immediate vicinity.

47. There are located within the city of Greensburg the general offices of the West Penn Power Company, the general offices of the Old Republic Insurance Company, a regional office of the Bell Telephone Company of Pennsylvania and the district offices of several insurance companies. Greensburg is the seat of the diocesan office of the Roman Catholic Diocese of Greensburg.

48. There has also been developed in Hempfield Township a multimillion dollar shopping complex known as Greengate Mall. The Mall is located about two miles west of Greensburg on U.S. Route 30 (Lincoln Highway). The developer of this modern mercantile complex is the nationally known Rouse Company of Baltimore, Maryland. This enclosed type center houses 70 stores with shops facing on a two level enclosed climate controlled mall featuring fountains, benches, etc., and creating an atmosphere for relaxed shopping. Parking facilities surrounding the complex accommodate 2,700 automobiles. Participating in this development is the Joseph Horne Co., one of the nation's foremost mercantile establishments. Also in the mall is a large store of the Montgomery Ward Co. It is estimated that approximately 800 persons are employed in the mall. Under development is an additional wing to the mall to accommodate a large establishment for the J. C. Penny Co., and 12 additional shops. The second tier of the addition will house business and professional offices. Parking will be increased with space for an additional 2,000 cars.

49. Westmoreland County is one of the largest counties both in area and population in Pennsylvania. It embraces an area of 1,023 square miles, ranking eighth in size among the 66 counties in Pennsylvania. According to the 1960 Census, it had a population of 352,629,

ranking fifth in population. Final U.S Census Bureau figures establish the 1970 population as 376,935, an increase of 6.9%.

50. There are 33 municipalities with a population of 2,500 or more in the county, namely:

	Final 1970 census figures
Allegheny Township	6,713
Arnold*	8,174
Derry Borough	3,338
Derry Township	15,902
East Huntingdon Township	7,234
Franklin Township	12,244
Greensburg*	15,870
Hempfield Township*	39,196
Irwin Borough*	4,059
Jeannette*	15,209
Latrobe Borough	11,749
Ligonier Township	6,278
Lower Burrell*	13,654
Monessen	15,216
Mt. Pleasant Borough	5,895
Mt. Pleasant Township	10,830
New Kensington*	20,312
North Belle Vernon Borough	2,916
North Huntingdon Township	29,443
Penn Township*	13,352
Rostraver Township	10,525
Salem Township	6,059
Scottdale Borough	5,818
Sewickley Township	6,735
South Greensburg Borough*	3,288
South Huntingdon Township	6,071
Southwest Greensburg Borough*	3,186
Trafford Borough*	4,288
Unity Township	18,419
Vandergrift Borough	7,873
Washington Township	5,613
West Newton Borough	3,648
Youngwood Borough*	3,057

*The municipalities marked with an asterisk are within the Pittsburgh Urbanized Area. The others are not.

51. Of the foregoing list of municipalities, six are cities, twelve are boroughs, and the remaining fifteen are townships.

52. Westmoreland County is an area of highly diversified industrial activity and has been experiencing continued growth. New industries located in the county and expansion programs of existing facilities have resulted in a population growth from 1950 to 1960 of almost 13%, compared with a statewide average of under 8%. Population growth from 1960 to 1970 was almost 7%. The major manufacturing industries are listed as follows:

Food and kindred products
Apparel and related products
Lumber and wood products
Furniture and fixtures
Paper and allied products
Printing, publishing and allied products
Chemical and allied products
Petroleum refining and allied products
Rubber and miscellaneous plastic products
Stone, clay, glass and concrete products
Primary metal products
Fabricated metal products
Machinery, equipment and supplies
Transportation equipment
Instruments and related products

53. The 1967 Census of Manufacturers discloses a total of 415 manufacturing establishments in the county as compared to 394 in 1958 and 411 in 1963. The annual payroll increased from $214,421,000 in 1958 to $251,904,000 in 1963 and $324,000,000 in 1967. Values added by manufacture increased from $349,916,000 in 1958 to $454,792,000 in 1963 and $564,800,000 in 1967. The number of employees increased from 39,000 in 1963 to 44,500 in 1967. Westmoreland County ranks twelfth

109-026—73——14

in the State in number of manufacturing plants, ninth in number of employees engaged in manufacturing and sixth in annual payroll.

54. The 1967 Census of Business-Retail Trade discloses a total of 3,191 retail establishments in the county with total sales of $498,000,000 and an annual payroll of $51,634,000. The county ranked sixth in the State in the number of retail establishments.

55. There were 290 wholesale establishments in the county in 1967 with total annual sales in 1967 of $270,701,000 and a yearly payroll of $18,031,000. Westmoreland County ranks ninth in the State in the number of wholesale establishments, ninth in sales and tenth in yearly payroll.

56. The 1965 Census Report on County Business Patterns (CPB–65–40) shows continued commercial growth. The number of employees in mid-March 1965 jumped to 80,050 as compared to 75,430 in mid-March 1962. The taxable payroll for January–March 1965 increased to $104,510,000 from $95,017,000 in January–March 1962. The total reporting units were 5,257 as compared to 5,139 in 1962. The county ranks eighth in the State in number of employees and fifth in taxable payroll.

57. Real estate within the county had an assessed valuation of $347,328,000 in 1966 as compared to $326,855,000 in 1963 and a market value of $1,279,095,000 in 1966 as compared to $1,186,962,000. The county ranks sixteenth in the State in percentage of urban population (06.7) and twelfth in density of population (344.7 per square mile).

58. The county is also among the most important agricultural areas in southwest Pennsylvania. As of January 1, 1968, there were 2,060 farms with a milk production of $8,319,000. In 1967, total receipts from the sale of crops and livestock were $15,558,000. Milk production in 1967 was 141,000,000 pounds with a value of $8,319,000.

59. Standard Rate and Data Service estimates 1968 consumer spendable income at $898,834,000.

60. As of December 31, 1968, there were eight national banks and five state banks in the county, together with a variety of other financial institutions. There are five hospitals in the county with a total of 1,206 beds.

61. The county also possesses top-ranking educational and cultural facilities. Located within the county are St. Vincents and Seton Hill Colleges, and regional campuses of the University of Pittsburgh and Penn State University. The county has 149 elementary schools, 44 secondary schools and five combined elementary and secondary schools. It also possesses excellent transportation resources. The Pennsylvania Turnpike passes through the area and the county is served by three interchanges. U. S. Routes 22 and 30 traverse the county and there are twelve other well-maintained highways. Sixteen major trucking companies are located in the county. The Penn Central's main line, the Baltimore & Ohio Railway and the Norfolk and Western System all serve the county. The Latrobe Airport, located two miles south of one of the county's most important industrial complexes in the Latrobe and Central Westmoreland area, is embarking on a program of upgrading its facilities. It operates a control tower with full navigational

equipment and a lighted 5,500-foot runway with parallel taxiway. A new $800,000 field is being developed in Rostraver Township.

62. The Westmoreland County Muncipal Authority owns and operates Beaver Dam, which is 7 miles long, has a capacity of 11 billion gallons and furnishes water to a large portion of the county.

63. Westmoreland County also offers year-round recreational resources. Laurel Highlands, Inc., is an official local agency promoting tourism in Westmoreland County and two adjacent counties. The Laurel Hill Ski Area, Fort Ligonier and Bushy Run Park attract thousands of visitors yearly. In addition, the county offers superb fishing, hunting, golfing and resort activities. The county is building six strategically located regional parks to serve urbanized areas.

64. Westmoreland County has its own Congressional District—the 21st Congressional District. The 21st Congressional District also includes a small segment of Fayette County. Likewise, it has its own State Senatorial District—the 39th Senatorial District—and shares the 32nd State Senatorial District with Fayette County. It has five State House of Representative Districts of its own and shares a sixth district with part of Armstrong County.

65. Only three communities in Westmoreland County have standard broadcast stations: Greensburg, Latrobe and New Kensington. The only FM station in Westmoreland County is WOKU–FM, the sister station of WHJB, Greensburg.

66. Written Interrogatories were propounded to all of the standard broadcast stations and FM stations, other than WHJB and its sister station WOKU–FM, which render primary service to Greensburg. Replies were received from the following:

WIXZ	McKeesport, Pennsylvania.
WTRA	Latrobe, Pennsylvania.
WJAC–FM	Johnstown, Pennsylvania.
WAVL	Apollo, Pennsylvania.
WMBS	Uniontown, Pennsylvania.
WJAS–FM	Pittsburgh, Pennsylvania.
WPIT	Pittsburgh, Pennsylvania.
WEEP–AM–FM	Pittsburgh, Pennsylvania.
KQV–FM	Pittsburgh, Pennsylvania.
KDKA	Pittsburgh, Pennsylvania.
WNUF	New Kensington, Pennsylvania.
WYDD (FM)	Pittsburgh, Pennsylvania.

67. The replies to the interrogatories establish that none of these stations render more than minimal service to Greensburg and its environs. None of these stations showed special concern for the needs of Greensburg. All of these stations cater primarily to the needs of the communities to which they are licensed. News originating in Greensburg is broadcast only when it is of general interest. None of the stations solicit or regularly carry public service announcements on behalf of groups and organizations in Greensburg. The same situation applies to religious programming, educational programming, public affairs programming and sport events. Only one station, WIXZ, McKeesport, regularly solicits advertising in Greensburg. Except for station KDKA, Pittsburgh, which occasionally broadcasts Greensburg items

and some political programs, the record establishes that no station located outside of Greensburg is meeting the programming and other needs of Greensburg and its environs.

68. The needs of Greensburg and its environs concededly are being met by the existing programming of WHJB. Radio station WHJB programs primarily for Greensburg, its environs and the balance of Westmoreland County. Local news of Greensburg is broadcast in depth. Public affairs programs are primarily directed to meeting the needs of Greensburg and Westmoreland County. Public service announcements are daily made on behalf of groups and organizations in Greensburg. Religious programming for Greensburg churches and religious organizations is regularly broadcast. Greensburg's school events, as well as sports, are broadcast. Individuals from Greensburg constantly appear on WHJB's programs. Information concerning Greensburg weather, driving conditions and working conditions is broadcast regularly.

69. During political campaigns, the facilities of WHJB are utilized by candidates for local office in Greensburg, by those for Westmoreland County offices, by candidates for the 21st U.S. Congressional District, by candidates for Pennsylvania State Senatorial Districts and State House of Representative Districts which include Greensburg and/or Westmoreland County and by candidates for statewide office. Local candidates which do not represent Greensburg and/or Westmoreland County do not utilize the facilities of WHJB. Free time is made available for local candidates to appear, to present their views and to be interrogated by call-in listeners.

70. WHJB is on the air 126½ hours a week. The breakdown for the composite week used for 1971 renewal applications is as follows:

	Hours	Minutes	Percent of total time on air
News	15	18	12.09
Public Affairs	4	22	3.45
Entertainment	64	34	51.04
Religion	4	43	3.72
Sports	7	31	5.94
Agriculture		35	.46
Other	2	35	2.04

71. No less than twelve local newscasts and headlines are presented on WHJB daily. There are a minimum of seven local newcasts during daytime hours on Monday through Friday, nine on Saturday, and eight on Sunday. When a situation warrants, additional local newscasts are added to the broadcast day. These newscasts are designed to keep the public informed as to matters and events that affect their daily lives. WHJB's news staff endeavors to relate pertinent information concluded or proposed at City Council, school district, township and borough meetings conducted in Westmoreland County. The areas involved are:

Allegheny Township
Arnold
Derry Borough
Derry Township
East Huntingdon Township
Franklin Township
Hempfield Township
Irwin Borough
Jeannette
Latrobe Borough
Ligonier Township
Lower Burrell
Monessen
Mt. Pleasant Borough
Mt. Pleasant Township
New Kensington
North Belle Vernon Borough
North Huntingdon Township
Penn Township
Greensburg
Rostraver Township
Salem Township
Scottdale Borough
Sewickley Township
South Greensburg Borough
Southwest Greensburg Borough
South Huntingdon Township
Trafford Borough
Unity Township
Vandergrift Borough
Washington Township
West Newton Borough
Youngwood Borough
Jeannette School District
Greensburg-Salem School District
Hempfield Area School District
Mt. Pleasant Area School District
Ligonier Valley School District
Greater Latrobe School District
Derry Area School District

In instances where regular WHJB personnel are unable to attend such functions, WHJB utilizes a "news stringer." This is one or more responsible citizens of a particular community or organization who is capable and qualified to give WHJB an accurate account or summation of the business conducted at these meetings. These persons are also used, on occasion, for general news stories (fires, accidents, etc.). Regular daily checks are made with the Pennsylvania State Police barracks in Greensburg; local police stations in Greensburg, South Greensburg, Southwest Greensburg, Jeannette, Latrobe, Mt. Pleasant, Irwin, North Huntingdon Township, Scottdale, West Newton, Youngwood and Ligonier. Calls are also made each day to these hospitals: Westmoreland Hospital in Greensburg, Jeannette Hospital, Monsour Hospital in Jeannette, Latrobe Hospital, Frick Community Hospital in Mt. Pleasant and McGinnis Hospital in Ligonier. On occasion, WHJB is asked to announce such items as street closings. WHJB Radio subscribes to the Associated Press wire service and is affiliated with the Mutual Broadcasting System.

72. From time to time during the winter months, WHJB has been requested by the surrounding school districts to announce school closings. These announcements are made from the time they are received until they are no longer applicable. The following schools and school districts had announcements made over the facilities of WHJB:

Jeannette Public Schools
Greensburg-Salem Public Schools
Hempfield Area Schools
Mt. Pleasant Area Schools
Ligonier Valley Schools
Greater Latrobe Public Schools
Derry Area Schools
Penn Trafford Schools
All 14 Schools in the Norwin School District
Franklin Area Regional Schools of Murrysville
Greensburg Central Catholic
Tindell Christian School.... (Kindergarten and Elementary)
Special Education Schools of Greensburg and Irwin
Murrysville Presbyterian Kindergarten School
St. Boniface Penn School

St. Regis School of Trafford
Delmont Women's Club Kindergarten
Valley School of Ligonier
All Southmoreland Schools
Cathedral Schools of Greensburg
St. Bernadine—St. Joseph of Mt. Pleasant
Transfiguration and Visitation Schools
Youghiogheny School District
Our Lady of Grace Nursery School on Mt. Pleasant Road
St. Agnes and Immaculate Conception, Irwin
St. Bartholomew of Crabtree
St. Simon and St. Jude Schools of Blairsville
St. Paul's School, Greensburg
Seton Hill Day Care Center . . . Mt. Thor Road
Seton Hill Nursery School
Holy Cross School of Youngwood
St. Joseph's Kindergarten and Elementary School of Derry
St. Bruno's School of Greensburg
University of Pittsburgh . . . Greensburg Campus . . . Day and Night School
Central Westmoreland Area Technical School in Youngwood . . . Day and Night
Westmoreland Business School
Greensburg Community Nursing Association (Will not be able to make calls)

73. Other regularly scheduled programs are utilized primarily for Greensburg, its environs and Westmoreland County. The daytime programs include:

COUNTRY MUSIC TIME—5:30 a.m. to 9:25 a.m., Monday through Friday—6:00 a.m. to 9:00 a.m., Saturday—Hosted by "Cowboy" Phil (Reed), this has been a regularly featured program of country and western music for the past 32 years. The program is specifically designed to meet the needs of the more than 2200 farms in Westmoreland County. Along with lively music, weather information vital to local farmers is given at regular 10-minute intervals. The weather information is supplied by the United States Weather Bureau in Pittsburgh. This information is in the form of a general weather forecast specifically for the Central Western Pennsylvania area. The forecast is then supplemented with temperature, humidity, barometric pressure, wind direction and velocity readings for the Westmoreland County area. For this purpose, WHJB has acquired a "weather station" apparatus approved by the United States Weather Bureau. Current time checks and temperature readings are given on an average of one every five minutes.

A daily 5–minute show is presented at 6:05 a.m. on "Country Music Time" by the Westmoreland County Agriculture Extension Service office in Greensburg. The program is presented Monday through Friday and features the Westmoreland County farm agent, Mr. Joseph Thurston, or his assistant, Mr. Bill Kelly or his associate, Mr. Dale Jackson. Mr. Jackson also conducts a weekly 10–minute "4–H" program at 8:50 a.m. each Saturday. The program consists of news and interviews with 4–H boys and girls of the Westmoreland County area. These two farm shows are produced and recorded in the WHJB studios.

HOME HINTS—9:25–9:30 a.m., Monday through Thursday—Two members of the Westmoreland County Agriculture Extension Office in Greensburg, Mrs. Pat Long and Miss Carol Krupp, present this 5-minute program. It is aimed specifically at the Westmoreland County

housewife. The program supplies her with the latest news and techniques concerning canning, food and household purchasing and other useful information.

SOCIAL SECURITY PROGRAM—12:55–1:00 p.m., Friday—This show is prepared and presented by the Greensburg Social Security office.

TRADING POST—9:30–9:45 a.m., Monday through Friday—The Trading Post, hosted by Davey Tyson, affords WHJB listeners a vehicle for buying, selling or trading items of a non-business nature. The Trading Post cannot be utilized by a business establishment to sell its merchandise. Items are sent to the station by mail. They are allowed 3 items for sale, trade, purchase or give-away. The "3-item" rule was established to afford as many participants as possible for a single show. A fee of one dollar is charged for three items for three days, or until the item or items have been bought, sold, traded or otherwise disposed of. The one-dollar fee was instituted to assure the sincerity of the participants, and to help defray the cost of handling the mail.

THE DAVEY TYSON PHONE PARTY—9:45–12:00 Noon and 1:00–2:30 p.m., Monday through Friday—This is a telephone conversation program that has been expanded five times since its inception in 1964, the latest expansion being in January of 1970. This program allows the public an individual "Sounding Board" for local or national issues or just general information. The announcer, Mr. Tyson, merely serves as a moderator and does not, as a rule, take sides in any issues. The subjects on the program are governed by the participating public. The callers are supplied with four separate telephone lines serving four separate and distinct locations: Greensburg, Pittsburgh, Jeannette and McKeesport. The calls are not concentrated in these or any one particular area, but come from all communities in Westmoreland County and parts of Allegheny County and even many from the fringe areas of adjacent counties. The subjects range from cooking and canning hints and their problems and solutions to local and world affairs.

Of a more serious nature was the topic of a proposed community college system for Westmoreland County. The two majority county commissioners advocated the community college for the county while the minority commissioner stood in opposition. The minority commissioner was in favor of presenting the proposal to the voters by way of a referendum. The citizens of Westmoreland County appealed to WHJB and the Phone Party in particular to present both sides in the case for discussion and if possible to invite responsible members to answer the public's questions. An invitation was extended to both the majority and minority faction. The majority commissioners declined the opportunity but the minority commissioner accepted. The "Association for Concerned Taxpayers" (ACT) Chairman, Mrs. Dorothy Shope, was also asked to appear on the Phone Party at another date to present the Association's views and arguments for the referendum. She also accepted. The position of WHJB and in particular the Phone Party was that of a medium, and did not show partiality.

On another occasion, during the summer of 1970, the Greensburg Water Authority informed its customers that their water rates were being increased by 38%. The Phone Party listeners used the Phone Party as their personal sounding board to register their dissatisfaction.

At other times during the past year, officials of two minority religions were invited to answer questions of the Phone Party callers. These were the Jehovah Witnesses and the Mormon Church of Greensburg.

MUSIC ON THE SQUARE—2:35–3:00 p.m., Monday through Friday—"Music on the Square" is a unique collection of records not generally heard on radio today. These records are from the private collection of Davey Tyson and feature, as an example, such well remembered personalities as: Al Jolson, The Ink Spots, The Mills Brothers, Kenny Baker, Beatrice Kay, The Three Suns, Sophie Tucker, Tommy Dorsey, etc. Along with the music, Davey Tyson interjects interesting conversation and information for the busy Westmoreland County housewife, weather and time checks.

COMMUNITY BULLETIN BOARD—2:45 p.m., Monday through Friday—This is a three to five minute program dedicated to announcements pertaining to meetings, dinners and fund raising organizations of a non-profit nature. The announcements are brought to the station or sent in by a member of the particular organization. No charge is made by the station for the service. The announcements come from organizations in every community of the county. In one typical Community Bulletin Board, September 14, 1970, the following announcements were made:

The Christian Businessmen's Committee of Greensburg are holding a dinner meeting Tuesday evening, September 15th, at 6:30 p.m. at the Greensburg Garden and Civic Center, featuring Mr. Donald F. McKechnie. The public is invited to attend. For more information: Phone 837–4578.

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The Greenridge Garden Club of Irwin will hold a Flower Show entitled "It Happens Every Fall" starting at 3:00 P.M. Saturday, September 19th at the Greengate Mall Community Room in the lower level. Entries for the horticulture section may be entered from 9 until 11 A.M.

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Fifteen courses will be offered by the Forbes Trail Area Technical School, located at Beatty and Cooper Roads in Monroeville. Registration for these adult evening classes will be taken from 7 to 9 P.M. September 21st and 22nd. For more information: Phone 271–5810.

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The Charter Oak United Methodist Church will hold a Country Fair on Saturday, September 19th from 12 noon to 6 P.M. at the church located 4 miles east of Greensburg along Route 30.

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St. Vincent Parish Parents Club will hold a sub sale at The Grove, Wednesday, September 16th. $1.00 orders will be taken by calling: Phones: 539–1336—539–9597—or 539–8677.

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The Rosary Altar Society of the Holy Trinity Church in Ligonier will hold their fall rummage sale Saturday, September 19th from 9 A.M. to 1 P.M. at the Old School Hall on Church Street.

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The Indiana Coin Club has scheduled a meeting for Saturday September 19th starting at 10 A.M. and Sunday, September 20th, starting at 9 A.M. at the Rustic Lodge in Indiana. There is ample free parking, and food is obtainable on the premises.

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Unit I of the Westmoreland Hospital Association will hold their annual Antique Show and sale September 18th, 19th, and 20th. (This coming Friday, Saturday and Sunday) starting at 1 P.M. at the Mountain View Inn.

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Renovations, including a cleaning of the Dome and spanking new paint job on planetarium galleries will make it necessary for Buhl Planetarium and Institute to close its doors to the public from September 14th through the 18th. It will reopen September 19th with the latest sky drama, "Creation to Cataclysm". Take in numerous exhibits on space and science and see an updated version of the 15 year old mural "Earth and Comet From the Moon."

NOON TUNES—12:15–12:30 P.M., 12:45–1:00 P.M., Monday through Friday—Entertainment for the Lunch-Time set. Records, Time and Weather.

THE CHRIS BRINKER SHOW—12:30–12:45 P.M., Monday through Friday—A program devoted to the woman of the house hosted by former Mrs. Pennsylvania, Chris Brinker. The show is of local origin and includes cooking, buying and beauty tips. Frequently, on an average of twice a week, Chris features a special guest from area organizations to discuss topics of special importance or interest. As examples, recent quests and topics include: Mr. Fred Brown, Associate Superintendent of the State Regional Correction Institution in Greensburg. Discussion centered around the "Prisoner Work-Release System." Mr. Ted Konrad, Principal of the West Hempfield Junior High School, on "Sex Education in the Schools"; The Westmoreland County and Wider Drug Abuse programs (2) with Mr. Albert D'Amico, Supervisor of the Southwestern Pennsylvania State Bureau of Drug Control, and Mrs. Alice Giglio, Supervisor of the Counciling Services of the Penn-Trafford School District; Mr. Robert Joyner, District Commander of the American Legion; Mr. Fred Servey, Public Education Supervisor of The Pennsylvania State Game Commission, on "Family Camping"; and on a National scope, Mr. Arthur Galway, Vice President for the March of Dimes, New York, on "The Rubella Vaccine."

HOMEWARD BOUND—3:05–6:00 P.M., Monday through Friday—A program of good-listening, up-tempo music interspersed with weather information, news and time checks for the home audience and the homeward bound worker.

EVENING NEWS DIGEST—6:00–7:00 P.M., Monday through Friday—This is a round-up of all the day's happenings: Local, area, and world news, business news and sports. The Mutual Network also presents a fifteen minute commentary on the news with Fulton Lewis (6:30–6:45). The final fifteen minute portion of the evening news digest is reserved for either special interviews or a further in depth study of local and area news and events. As an example, an interview was conducted with Mrs. Joseph Bubenheim, Executive Director, on

the opening of the new Greensburg Y.W.C.A., on Wednesday, September 10, 1970.

BALKAN GAITIES—1:05–2:00 p.m. Sunday—Two programs of Polish and Slovenian Music. The dominant ethnic group in Westmoreland County is of Slovenian descent. Regular time checks and weather information are also included in the program.

THE AMERICAN LEGION AUXILIARY—2:05–2:20 P.M.—The last Sunday of each month. A program of interviews and information concerning the American Legion Auxiliary in Westmoreland County. The program originates in the WHJB Studios.

74. The WHJB Sports Department broadcasts high school football every Friday and Saturday nights from one of the area high school stadiums. These broadcasts are done live. The home teams represented in these broadcasts are: Greensburg Salem, Hempfield Area, Jeannette, Latrobe, Norwin, Mt. Pleasant, Derry Area and Greensburg Central Catholic. Basketball games are broadcast every Tuesday and Friday nights with the same above mentioned home teams.

75. Through the cooperation of the Greensburg City Council of Churches, the Catholic Diocese of Greensburg and other independent churches and church groups, WHJB presents a wide scope of religious programs, services and news for Central Westmoreland County. The Greensburg Catholic Diocese is the third largest diocese in the State of Pennsylvania, encompassing a four-county area: Westmoreland County, Fayette County, Indiana County and Armstrong County. The Greensburg Catholic Diocese has a total population of 220,486. Westmoreland County's Catholic population is 134,000. The following programs are produced for WHJB by the Greensburg Catholic Diocese:

9:20–9:35 A.M., Sunday—"Bishop Connare" (Commentary and editorial)
10:15–10:30 A.M., Sunday—"Catholic Forum" (Program on Catholic life)
6:35–6:50 P.M., Sunday—"Catholic Accent" (Catholic religious news)

The Greensburg Council of Churches consists of approximately 12,000 resident and non-resident members of age twelve and up. Sixteen member churches broadcast their Sunday morning church service over WHJB in rotation. These churches are:

The First Presbyterian Church of Greensburg
The First Lutheran Church of Greensburg
The First Methodist Church of Greensburg
The First Church of Christ
The First United Church of Christ
The First Baptist Church of Greensburg
The Third United Church of Christ
The Trinity United Church of Christ
The South Greensburg Methodist Church
The Zion Lutheran Church of Greensburg
The United Presbyterian Church of Greensburg
The Westminster Presbyterian Church of Greensburg
The Church of the Brethren of Greensburg
The Otterbein Evangelical United Brethern Church
Saint Michaels Orthodox Church
The Christ Episcopal Church of Greensburg

In addition, a number of other religious programs sponsored by Greensburg churches are regularly broadcast.

76. In a typical week of broadcasting, WHJB dedicates 20 minutes per day to regularly scheduled public service announcements. Wherever possible, these announcements are dealt with on a local level, such as the Westmoreland County Chapter of the Mental Health Association; Westmoreland Tuberculosis and Health Association; Greensburg Fire Department Blood Raising Campaign; Jeannette Fire Department Circus, etc. Many times the announcements are recorded by responsible officials of the agency concerned. If the public service announcement is of a national campaign nature, such as the National Heart Association, then, wherever applicable, a local tag line is added. Using the week of September 14, 1970, as a typical week, the following public service announcements were aired:

Twenty (20) one-minute public service announcements per day. These public service announcements are scheduled from 5:30 a.m. to 12:00 midnight, the regular broadcast day, on a rotating basis—two announcements per day.

1. **The American Heart Association**
2. **The American Cancer Society**
3. **President's Council on Alcoholism**
4. **Westmoreland County T.B. Association**
5. **The United Jewish Appeal**
6. **Westmoreland County United Fund**
7. **Civil Defense**
8. **Save the Children Federation**
9. **The Pennsylvania State Police (Greensburg Troop A)**
10. **Radio Free Europe**

As found above, also of a public service nature is the daily Community Bulletin Board. This 3 to 5 minute program consists of church, social or any other non-profit organization announcements pertaining to dinners, meetings, fund raising campaigns, etc. This is a regularly scheduled program that is aired at the same time every day during peak traffic times.

77. Aside from its regularly scheduled public service announcements and programs, WHJB very often utilizes the short "drop-ins" or station "I.D.'s." These are usually used during a saturation public service campaign, such as blood donation campaigns, chest X-ray campaigns, etc. On certain occasions, such as National Hospital Week, Greensburg and Westmoreland County administrators are invited to the station for a round-table discussion program. These are usually 15 minute programs and may be featured as often as one per day during the campaign.

78. WHJB has received many unsolicited letters of commendation from Greensburg and Westmoreland County educational and religious institutions and civic and philanthropic organizations. These include:

Westmoreland County Heart Association
Hempfield Area Senior High School
Westmoreland County Chapter, American Red Cross
Central Westmoreland Chamber of Commerce
The Greater Greensburg Jaycees
Diocese of Greensburg
Greensburg Air Scouts Squadron No. 403
St. Vincent College
Greensburg Fire Prevention Bureau
Salvation Army, Greensburg Area Citadel
Westmoreland Children's Aid Society

Mount Pleasant Joint School System
Churchmen of Holy Trinity Church
Westmoreland Tuberculosis and Health Association
National Foundation—March of Dimes—Westmoreland Chapter
Greensburg District Office, Social Security Administration
Westmoreland-Fayette Council, Boy Scouts of America
League of Women Voters of Greater Greensburg Area
Seton Hill College
Animal Care of Westmoreland County
Westmoreland County Branch, Pennsylvania Association for the Blind, Inc.
United Cerebral Palsy of Western Pennsylvania, Inc.
Fort Ligonier Memorial Foundation, Inc.
Jehovah's Witnesses
Mayor, City of Greensburg
School District of City of Jeannette
Latrobe Volunteer Fire Department
Young Men's Christian Association of Greensburg
Belle Vernon Rotary Club
Westmoreland County Community College
American Cancer Society, Westmoreland County Unit, Greensburg
United Mine Workers, District 8, Greensburg
Westmoreland County Association for Retarded Children, Inc.
National Multiple Sclerosis Society, Allegheny District Chapter
Lion's Club, New Alexandria
Myasthenia Gravis Clinic of Western Pennsylvania, Mercy Hospital
The National Secretaries Association, Laurel Chapter, Latrobe
The Westmoreland County Museum of Art
Mutual Aid Ambulance Service, Inc., Greensburg
The Salvation Army, Inc., Jeannette
Republican County Committee, Westmoreland County
Greensburg Salem High School Band
The Arthritis Foundation, Western Pennsylvania Chapter
Borough of Scottdale
Borough of Irwin
Charnesky-Vaccare American Legion Auxiliary Unit 981, South Greensburg
Westmoreland Girl Scout Council, Inc., Greensburg
Lion's Club of Jeannette
Rolling Rock Hunt Racing Association, Inc.
Junior Achievement of Central Westmoreland, Greensburg
United Funds of Westmoreland County
Westmoreland Community Concerts, Inc.
Child Health Association of Sewickley
Project H.E.L.P., Greensburg
First Lutheran Church
Westmoreland County Sheltered Workshop, Inc., Greensburg
Rotary Club of New Kensington
United States Jaycees
I–T–E Imperial Corporation, Greensburg Division
The Greensburg Salem Band Parents Association
The George Washington Motor Hotel, Washington, Pa.
Rolling Rock Club Fisheries, Laughlintown

79. As found above, the present programming of Station WHJB is directed primarily at serving the separate and distinct needs of Greensburg, its market and trading area, and of Westmoreland County as a whole. It is designed to meet the educational, industrial, political, civic, religious and other needs. In designing and presenting these programs, WHJB has received the full cooperation of Greensburg and Westmoreland County civic, political, religious, educational, and other leaders.

80. WHJB represents that if the application for increased power is granted, WHJB's programming will continue to be designed to

satisfy primarily the needs of Greensburg and of Westmoreland County as a whole. In view of the large number of stations located in Pittsburgh and the distance of Greensburg from Pittsburgh, and as a result of its ascertainment of community needs in the gain area, WHJB claims that it will continue primarily to cater to the needs of Greensburg and Westmoreland County, but will expand certain programs so as to include guests and comments from various leaders and spokesmen from the gain area. It also intends to expand its total Westmoreland County news coverage.

81. Station WHJB derives its advertising revenues from these sources:

Local: That which is purchased directly by locally owned and operated businesses who deal directly with the station. There are a few exceptions of locally owned and operated businesses which have secured the services of an advertising agency. The great bulk of local advertisers are located in Westmoreland County or at the periphery of Westmoreland County.

Regional: That which is placed through an advertising agency in Pittsburgh by firms that are based in Greater Pittsburgh, or which sell products or services in Westmoreland County. The great majority, if not all, of these firms have branches or agencies in Westmoreland County, and the advertising is placed primarily for the benefit of these branches or agencies.

National: That which for the most part is purchased on the Mutual Network and based on a national level, rather than for the Pittsburgh or Greensburg area directly. No advertising revenue is from the Mutual Network.

82. Station WHJB's estimated revenue for 1970 was $340,000 broken down as follows:

		Percent
Estimated local revenues:		
Greater Greensburg	$102,000	30
Other areas in Westmoreland County	125,800	37
Pittsburgh	10	
Other areas outside of Westmoreland County	30,600	9
Estimated regional revenues:		
Pittsburgh	51,000	15
Other areas	25,500	7.5
Estimated national revenues	5,100	1.5
Total estimated revenues	340,010	100

83. Actual revenues for 1970 were $349,000.

84. The following is a breakdown of the station's estimated annual revenue in event of grant of the application to increase power:

		Percent
Estimated Local Revenues:		
Greater Greensburg	$112,200	30.3
Other areas in Westmoreland County	138,380	37.4
Pittsburgh	10	
Other areas outside of Westmoreland County	33,048	9.0
Estimated regional revenues:		
Pittsburgh	54,060	14.6
Other areas	27,030	7.3
Estimated national revenues	5,202	1.4
Total estimated revenues	369,930	100

85. The total estimated cost of operation of Station WHJB in the event of the grant of application to increase power is as follows:

Technical expense	$42,000
Program cost	82,500
Selling, general, and administrative expenses	205,000
Interest expense	3,200
Total estimated annual cost of operations	332,700

86. The bulk of WHJB's advertising revenues presently are derived from local advertisers, i.e., advertisers located in and doing business in Greensburg and/or Westmoreland County. Local advertising is solicited directly by the sales staff of WHJB. WHJB employs the services of a Pittsburgh based station representative firm known as Gateway Reps. This firm, in conjunction with the WHJB sales staff, is in charge of the solicitation of regional advertising. The policy of WHJB has always been to restrict regional advertising to those accounts which have outlets in the Greensburg marketing area or to products sold in the Greensburg market. This policy has been dictated in major part by a desire to protect the local advertisers who form 75 to 80% of the WHJB account list.

87. Pertinent examples of the regional accounts solicited by WHJB are the following:

Mellon National Bank—Offices in Greensburg (3), Latrobe (2), New Stanton (1), Ligonier (1).

Horne's Department Store—Suburban retail outlet in the Greengate Mall, Greensburg.

Bards Dairy Land—Retail outlets in Greensburg and Jeannette.

Dollar Savings Bank—Outlets in Greensburg and Jeannette.

Brookline Bank—Office in Derry.

A & P Food Markets—Outlets in Greensburg, Jeannette and Norwin Shopping Center (Irwin).

Kroger Food Store—Outlet in Greensburg.

Moore, Leonard & Lynch—Stock brokerage outlet in Greensburg.

Pittsburgh Zone Ford Dealers Association for Westmoreland County Dealers. Also, Chrysler Products Dealer, General Motors Products Dealers, American Motors, and Foreign Auto Products.

Dairy Queen Association of Western Penna. Outlets in Westmoreland County.

Duquesne, Stoney's Koehler, Schmidt's, Ballantine and other beers all distributed by local distributors.

Peoples Natural Gas Company—serving consumers in Westmoreland County.

Braun's Bread—Distributed in stores and supermarkets throughout Westmoreland County.

Mountain Valley Mineral Water—Distributed in Greensburg through local distributor.

Winky's Retail restaurant outlets in Greensburg and Jeannette.

88. WHJB's regional sales representative has advised WHJB that because of its location as a practical matter it would not be considered in the Pittsburgh market. The WHJB format, with its strong local flavor, is not conducive to obtaining substantially increased regional revenues. Based on the WHJB format and the format that it proposes in the event of a grant, there would be some increase. The anticipated annual additional regional revenues from Pittsburgh based advertisers is estimated at $3,000.

89. If the station operates with an increase in daytime power as proposed, it intends to continue its present advertising policies. The growth of the Greensburg-Central Westmoreland area is such that

WHJB intends to continue the sale of this trading area as its major emphasis. With the improvement of service to this area and as it expands and increases in area and importance, it is anticipated that accounts will come from a broader base in Westmoreland County. It is anticipated that a new market for advertising revenues would open up in the West Newton, Monessen and Belle Vernon areas in the southwest corner of Westmoreland County and the Arnold, New Kensington and Lower Burrell areas in the northwest corner of the county. Percentage-wise, local advertising revenue is estimated to increase about 10%, while regional revenues are estimated to increase about 6%. The estimated increase in national revenue is insignificant. The basic principle which WHJB intends to follow is that of account solicitation where the retail outlets or products distribution are a factor in the Greensburg trading area.

90. Examples of WHJB's promotional advertising material show that the current emphasis on sales is Greensburg, the Greensburg marketing area and Westmoreland County. No effort is made to attract advertisers for the Pittsburgh market. If the increase in power is granted, the present advertising policies are expected to be continued.

91. Station WHJB with its present power covers the major part of Westmoreland County and programs primarily for Greensburg and secondarily for Westmoreland County. Its advertising revenues are derived not only from Greensburg, the station's location, but from the entire Greensburg trading area. Issue (1)(d) as framed refers to the "projected sources of the applicant's advertising revenues within its specified station location" as compared with its projected sources from all other areas. In the light of this proceeding, which involves not a license for a new station but merely an application for an increase in power, it seems apparent that the Commission is interested in ascertaining whether WHJB can support its proposed operation with revenues from its present primary service area. The record establishes that this can be done. The advertising revenue from Greensburg and Westmoreland County is and will continue to be sufficient to support the WHJB operations.

Ascertainment of Problems, Needs and Interests in Gain Area

92. Political, civic, ethnic, educational, labor and other leaders, as well as members of the general public in the gain area were interviewed. In excess of 125 representative community leaders were interviewed by management-level employees of WHJB. In addition, over 60 members of the general public from all walks of life, but principally from Pittsburgh, were interviewed. As far as Westmoreland County is concerned, community leaders not only in Monessen, North Belle Vernon and West Newton were interviewed, but also those in Arnold.

93. All persons interviewed were asked not only about the significant needs and problems of the communities in which they resided, but also were asked to what extent stations located in their respective communities were meeting the needs and problems of the communities as well as the specific needs of the organizations they belonged to. Their views were also solicited as to the type of programming that would assist in meeting these needs and problems.

94. In addition to the specific needs, interests and problems of particular communities, a Westmoreland area-wide need frequently mentioned was the need for a communication media which served the entire county. There was a desire expressed for more local and county news. In West Newton, particularly, the community leaders complained that they were in a fringe reception area and are not being adequately served by any radio station.

95. The persons interviewed felt that by and large the Pittsburgh stations and other stations serving the proposed gain area were doing a fairly adequate job and were contributing to a diversity of programs to assist in meeting the needs and problems of the gain area. The consensus of opinion was that there were sufficient stations in the gain area to meet the needs of the gain area, but that a station in Greensburg could assist by a call-in program, by expanded news coverage and by good entertainment.

96. After the survey was completed, the results of the survey were discussed, evaluated and analyzed at staff meetings of WHJB, consisting of the President and General Manager, the Assistant to the President, the program director and the acting news director. The conclusion was reached that the specific needs and problems of Pittsburgh and the balance of the gain area outside of Westmoreland County could best be met by stations presently located in Pittsburgh and in other communities in the gain area. While WHJB should make its facilities available for such public service programming as organizations in Pittsburgh and the balance of the gain area may request, it was concluded that there was no need to actively seek out organizations located outside of Westmoreland County, as there were sufficient broadcast stations in Pittsburgh and other communities in the gain area to meet the needs and requests of these organizations.

97. It was also concluded that certain specific needs and problems of Pittsburgh and the balance of the gain area outside of Westmoreland County should be met by a Greensburg station as follows:

A. While WHJB will continue primarily to cater to the needs of Greensburg and Westmoreland County, it concluded that the maintenance of its daily "call-in" program would assist in meeting the needs of Pittsburgh and the balance of the gain area. With the direct telephone lines being strategically placed as they are, it will afford more people the opportunity to call in and discuss the needs and problems of their particular area. This "call-in" program, The Davey Tyson Phone Party, is described in paragraph 74. WHJB proposes to include in this program invitations to various leaders and spokesmen in the proposed gain area to appear as guests on the program, as it is presently doing in its primary service area. These leaders will be invited to discuss the specific needs and problems of their community, as well as the area as a whole.

B. WHJB proposes to follow the same procedure with respect to The Chris Brinker Show, also described in paragraph 74 above. As in The Davey Tyson Phone Party program, WHJB proposes to invite various leaders and spokesmen from the proposed gain area to appear as guests on The Chris Brinker Show.

C. In the event the increase in power is granted, WHJB also proposes to expand its news coverage so as to include significant events which may occur in the gain area. Primary emphasis, however, will continue to be placed on Greensburg and Westmoreland County news. At present the station has hourly broadcasts of local news. The survey indicated that there were certain underserved news areas, such as southwest Westmoreland County and the Arnold area in the northern part of the county. People in areas such as West Newton, North Belle Vernon, Monessen and Arnold, as well as others, stressed the lack of local news on any of the stations now serving their areas. They expressed a desire for news of happenings of the county government and WHJB feels, since it is located in Greensburg, the county seat, it could best serve this need. Also, people who work in Greensburg but live in the proposed gain area indicated they are interested in county news but are unable to obtain it at the present time. Westmoreland County, as of now does not have its own news media that all county residents can tune into and be brought up-to-date on the news happenings of the county. WHJB feels by having total county coverage it can create a better understanding between government (county and local) and the general public. WHJB therefore proposes to expand its newscasts so as to report even more fully news of Westmoreland County, and particularly, the activities in Westmoreland County which affect all areas in the county. Attention will also be given to news from the smaller communities which are adjacent to Westmoreland County and presently suffer from lack of adequate reporting. WHJB will continue to report major Pittsburgh news stories but in view of the large number of stations which are located in Pittsburgh, it does not propose to cover local Pittsburgh events. WHJB proposes to obtain news from the Westmoreland gain area by telephone calls to police stations, fire departments and hospitals, as well as utilizing "news stringers" and its Associated Press wire service.

D. The results of the survey also established there was one area-wide problem which WHJB feels could be met by the station, and that is in the area of employment opportunity. In recognizing the need for employment opportunities for the residents of the entire service area, WHJB proposes to initiate a program wherein job opportunities will be made public. This will be a 15-minute program entitled "Jobs Unlimited," to be broadcast each Saturday from 9:05 a.m. to 9:20 a.m. The program will feature a member of the employment or promotional staff of various industrial, research and clerical concerns from the entire service area. The representatives will be invited to either come to the WHJB Studios or will be given the opportunity of presenting their particular needs by telephone. The representatives will express their respective job opportunities with regard to qualification, training, salary, benefits, etc. The listeners will then be given further information on the procedure for filing an application for employment, securing an interview, or further inquiry. It is hoped that by this means persons with particular skills will be given the opportunity to find needed employment, or better working opportunities in line with their particular skills and needs.

109-026—73——15

Conclusions

1. Based upon the findings made herein it is clear that WHJB, Inc., has adequate resources to meet the financial needs of its proposal. Accordingly, it is concluded that WHJB is financially qualified to construct and operate its proposed station.

2. WHJB's proposal, if granted, will result in service to the city of Pittsburgh. As presently constituted. WHJB does not penetrate the city of Pittsburgh with its signal. If WHJB's application is granted its 5mv/m daytime contour will cover all of Pttsburgh. According to the 1970 Census, Greensburg has a population of 15,870 and Pittsburgh has a population of 520,117. Under the Commission's *Policy Statement in Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 FCC 2d 190 (1969), there is a presumption, therefore, that if WHJB's application should be granted it would serve Pittsburgh rather than its assigned community, Greensburg. Under the Commission's policy this presumption is rebuttable. To rebut the presumption WHJB in this proceeding offered evidence as to the distinctive needs of Greensburg which it proposes to serve; the advertising revenues which the station obtains from Greensburg and its immediate surrounding suburban area; and the independence from its nearby large city neighbor, Pittsburgh. WHJB's purpose for seeking an increase in power is to improve its service to its suburban community.

3. The record establishes that Greensburg has separate and distinct transmission and other programming needs. These needs are distinct and separate from those of Pittsburgh. It has its own political, educational, civic, industrial, business, religious and other needs. These separate and distinct needs are accentuated by the distance separating Greensburg and Pittsburgh, by Greensburg's status as the county seat of Westmoreland County, and by its own extensive trading area. It cannot be considered either as a residential or a "bedroom" type community or a suburb of Pittsburgh.

4. The record further establishes that WHJB presently is providing a local transmission facility for Greensburg. The answers to interrogatories propounded to other stations rendering primary service to Greensburg establish that no other station is showing any special concern for the needs of Greensburg. None of the stations, other than WHJB and its sister FM station WOKU–FM broadcasts on a regular basis any special programs directed to Greensburg. None of them has any newsmen assigned to Greensburg. No other stations cater to or meet the needs of Greensburg and outside stations are not now serving the separate and distinct needs of Greensburg.

5. If the proposed increase in power is granted, WHJB undertakes to continue to meet the transmission, programming and other needs of Greensburg and it realistically will meet its obligation primarily to serve Greensburg as an outlet. The record demonstrates that

WHJB has consistently considered the needs of Greensburg and Greater Greensburg as its primary area of responsibility and that it has met these needs. The record warrants the conclusion that reliance may be placed on its assurances and representations that if this application is granted it will continue to operate as a Greensburg station, that it will continue to meet the specific programming needs of Greensburg, and that it will continue to deem its primary responsibility to be to Greensburg.

6. The record establishes that WHJB's advertising revenues from Greensburg and its trading area will be adequate to support its operation with increased power. It will not be necessary to generate Pittsburgh local revenue. The projected source of revenue from local Pittsburgh advertisers is minimal. There may be an increase in revenue from regional advertisers who have their main offices in Pittsburgh and branches or sales agencies in the Greensburg trading area, but if this revenue does not materialize, WHJB's revenues from Greensburg and the Greensburg trading area will be adequate to support its operation at increased power.

7. The record establishes that the survey of community needs for the gain area conducted by WHJB conformed to the standards prescribed in the recently adopted *Primer*. WHJB consulted with community leaders who could be expected to have a broad overview of community problems and with members of the general public. The record establishes that by this survey WHJB has determined the problems which exist in the gain area and with which it should deal in fulfilling its secondary responsibility to that area should its application for increase in power be granted. WHJB, in its exhibit, has listed the significant problems, needs and interests in the gain area disclosed by its survey.

8. WHJB has evaluated the information received as to the problems of the gain area. Consistent with its primary obligation to meet the needs and interests of its city of license—Greensburg—WHJB has formulated a program schedule which has taken into consideration the needs of the gain area which merit treatment by it.

9. Based on the entire record, it is found and determined that WHJB has met the standards prescribed in the *Primer*, that its efforts to ascertain community problems, interests and needs of the gain area and its method of contacting representative community leaders and members of the general public in the gain area were adequate; that it has established an awareness of the needs, interests and problems of the gain area; that it has formulated secondary programming for the gain area consistent with its primary obligation realistically to continue to serve the city of Greensburg.

10. Upon the basis of the entire record in this proceeding, and the findings and conclusions hereinbefore set forth, it is concluded that a grant of WHJB's application will serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the application of WHJB, Inc., to increase its daytime power (BP–17962) IS GRANTED, subject to the following condition:

Before program tests are authorized, permittee shall submit new common point impedance measurements and sufficient field intensity measurement data to clearly show that the adjustment of the daytime directional array has not adversely affected the operation of the present nighttime directional antenna system.

FEDERAL COMMUNICATIONS COMMISSION,
ERNEST NASH,
Hearing Examiner.

F.C.C. 73R-45

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WIOO, INC., CARLISLE, PA.	Docket No. 19468 File No. BPH-6572
HOWARD J. HILTON, JOHN E. McGOWAN, AND JOHN E. HILTON, DOING BUSINESS AS HILTON, McGOWAN & HILTON, CARLISLE, PA.	Docket No. 19469 File No. BPH-6631
ALEXANDER CONTRACT AND SYLVIA CONTRACT, DOING BUSINESS AS CUMBERLAND BROADCASTING CO., CARLISLE, PA.	Docket No. 19471 File No. BPH-7404
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted January 24, 1973; Released January 31, 1973)

BY THE REVIEW BOARD:

1. Before the Review Board is a petition to enlarge issues, filed September 28, 1972, by WIOO, Inc. (WIOO), which seeks the addition of an issue to determine whether Cumberland Broadcasting Company (Cumberland) knowingly solicited a false and misleading statement to be filed with the Commission in support of its application, and, if so, the resulting effect on Cumberland's basic or comparative qualifications.[1]

2. WIOO's petition is directed toward a portion of Cumberland's amended financial showing[2] wherein Cumberland relies upon the sale, if necessary, of certain property known as 117-119 West High Street in Carlisle, Pennsylvania, which, Cumberland asserts, has a ready market value of $86,000.[3] WIOO's petition alleges that in order to substantiate their claim of marketability, Cumberland attempted to obtain from James R. Scott, a Carlisle real estate agent, an "agreement of sale" to be filed with the Commission. In his affidavit attached to the petition, Scott relates that Alexander Contract (a Cumberland principal) asked Scott to draft and sign the agreement to purchase the property for $80,000. When Scott said he was not interested in the purchase, especially because the consideration was nearly double Scott's estimate of its value, Contract assured him that the agreement would be destroyed after receiving a license for a new FM station.

[1] Also before the Board are the following related pleadings: (a) Broadcast Bureau's comments, filed October 12, 1972; (b) Cumberland's opposition, filed October 19, 1972; and (c) WIOO's reply, filed October 30, 1972.

[2] The amendment was accepted by Order of the Presiding Judge, FCC 72M-832, released June 27, 1972.

[3] The disparity between Cumberland's assertions of fair market value, and WIOO's valuation (approximately $50,000) was the subject of an earlier petition to enlarge, and by Memorandum Opinion and Order, 37 FCC 2d 342, 25 RR 2d 312, released September 20, 1972, the Review Board added a limited financial issue against Cumberland to determine both the "current marketability" and the "reasonable fair market value of the property proposed for sale" by Cumberland's principals.

Scott swears that Contract then told him (Scott) that the purpose of the document was "to substantiate a ready purchaser for the property in order to establish liquidity and assetts [sic] in cash to the F.C.C. in order to qualify financially for an FM license." The Broadcast Bureau, while questioning the timeliness of the petition,[4] supports the addition of "an appropriate issue".

3. Cumberland opposes the petition on both procedural and substantive grounds. Cumberland argues first that the petition is nothing more than a "poorly disguised" petition for reconsideration of the Review Board's Memorandum Opinion and Order, *supra* note 3, which, having considered the "entire James Scott matter,"[5] added only a limited financial issue. Cumberland also opposes the petition on the merits, on the grounds that the allegations fail to establish improper conduct, and that Scott's affidavit relates only a portion of the events which actually occurred. The sequence of events is then augmented by Cumberland's assertions that Scott was initially interested in purchasing the property; that he knew the agreement was to be non-binding; and that Scott subsequently indicated his reluctance to sign what his attorney purportedly advised him was a binding agreement.

4. In support of its claims, Cumberland submits an affidavit of Alexander Contract,[6] who claims that when Scott asked him what would happen should the FCC's ruling be delayed for a year, Contract assured him that he (Scott) would not be sued on the agreement, Contract maintains that Scott agreed to the proposal and made some notes about Contract's request. It was Scott's responsibility to draft the agreement, and Contract insists that Scott was "free to include any conditions or terms he desired." Upon learning of Scott's change of mind, Contract undertook to draft the proposed agreement with the aid of his attorney, characterizing this effort as "affirmative action to insure that the document that was expected to be filed with the Commission said exactly what was to be the understanding between Mr. Scott and me." The draft agreement[7] states that Scott is "interested in purchasing [the] property for $86,400",[8] but that he "cannot make a binding offer". The draft was never seen by, nor read to, Scott, who was thus, Cumberland asserts, not in a position to know of Contract's efforts to secure an agreement embodying the "complete" understanding. The document does not contain language to the effect that Contract would not institute legal proceedings against Scott, nor does it contain Contract's purported intention to destroy the agreement upon receiving an FCC license.

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[4] Scott's affidavit is dated August 25, 1972, and was previously submitted to the Board by WIOO on September 8, 1972, in connection with an earlier petition to enlarge issues. See note 5, *infra*.

[5] WIOO made reference to the "James Scott matter" in its reply to Cumberland's opposition to WIOO's third supplement to its petition to enlarge, filed September 8, 1972, and attached thereto as Exhibit C, the same affidavit of Scott now under consideration.

[6] Also submitted is an affidavit of Cumberland's attorney who was a witness to a phone call Contract made to Scott, aided in the preparation of a draft "agreement," and participated in an abortive attempt to secure Scott's attorney's approval of the agreement. Scott's attorney informed Contract and his counsel that he had not been consulted in the matter by Scott.

[7] A copy of the draft is attached to Cumberland's opposition.

[8] The difference between consideration of $80,000 in Scott's affidavit of August 25, 1972, and that of $86,400 in Contract's affidavit is unexplained, but immaterial to our consideration.

5. In reply, WIOO submits a further affidavit of Scott, dated October 27, 1972, in which Scott denounces Contract's affidavit as "misleading and deviat[ing] from the truth in several respects." Scott reaffirms his complete lack of interest at any time in purchasing Contract's property, and then states (apparently in spite of his lack of interest) that he consulted his attorney, who recommended that Scott refrain from entering an agreement he had no intention of fulfilling. Scott stresses that:

> . . . I was approached by Mr. Contract to enter into this agreement for the purchase of his property in order for him to establish his financial liquidity and that I made it clearly apparent to him that I was totally disinterested in securing his real estate. It was then that he suggested an executed and notorized [sic] sales agreement indicating my intent to purchase the property for a rediculously [sic] high price with his assurance as a "gentleman" that I would never be called upon to complete the transaction.

6. Initially, the Board notes that the instant petition is untimely and that no good cause has been shown for the tardiness; however, the Board agrees with the Broadcast Bureau that the *Edgefield-Saluda* test [9] has been met and that the serious public interest questions raised by the allegations merit our consideration. *Chapman Radio and Television Company*, FCC 73R–8, released January 10, 1973; and *Medford Broadcasters, Inc.* (*KDOV*), 18 FCC 2d 699, 16 RR 2d 900 (1969). The Board disagrees with Cumberland's contention that the matter before us is a "petition for reconsideration". The Commission's Rules explicitly state that petitions for reconsideration of interlocutory actions of the Review Board will not be entertained. See Sections 1.102 (b) (2), 1.106(a) and 1.291(c) (3) of the Rules. However, the Board must reject Cumberland's argument that WIOO's petition has been the subject of our previous determination. Our prior consideration does not preclude the Board from acting on the instant request because they are premised on distinctly different issues. *Cf. WTAR Radio-TV Corporation* (*WTAR–TV*), 37 FCC 2d 480, 483–84, 25 RR 2d 463, 468 (1972). The matter previously raised by WIOO was with regard to Cumberland's financial qualifications, specifically, the determination of the value of the property which Cumberland proposed to sell to meet its cash requirements.[10] The allegations now before the Board raise questions concerning the character and conduct of one of Cumberland's two principals. This issue, therefore, is for the first time raised by the instant petition. Having determined that there are no procedural infirmities, we will now proceed to the merits.

7. The petitioner has raised certain questions, which, if true, seriously reflect upon Cumberland's character and its qualifications to be a Commission licensee. Cumberland's assertions to the contrary, the conflicts in the affidavits before the Board must be resolved at an evidentiary hearing. See *Christian Voice of Central Ohio*, 26 FCC 2d 76, 81–82, 20 RR 2d 389, 395 (1970); *Sumiton Broadcasting Co.*,

[9] *The Edgefield-Saluda Radio Co.* (*WJES*), 5 FCC 2d 148, 8 RR 2d 611 (1966).

[10] Furthermore, Scott's affidavit was appended to a reply pleading (note 5, *supra*), and therefore the Board expressly limited its consideration to the financial issue raised in WIOO's petition, as thrice supplemented. No new issue may be raised nor considered in a reply pleading; rather, the material contained therein must be confined in scope to a surrebuttal of an opposition. Sect. 1.294(c) of the Rules.

Inc., 15 FCC 2d 400, 404, 14 RR 2d 1000, 1005 (1968), and cases cited therein. In addition to the conflicting affidavits, however, there are a number of undisputed facts, which, taken together, also indicate the necessity of an evidentiary inquiry to determine whether Alexander Contract's conduct reflects adversely on his character qualifications. Contract's attempts to secure a document which was to have been used to substantiate his financial representations to the Commission remain uncontradicted and, indeed, acknowledged. His motivation and the efficacy of the document clearly warrant the addition of an issue. A similar situation arose in *Orange County Broadcasting Co.*, 37 FCC 2d 794, 25 RR 2d 619 (1972), which involved the apparent solicitation of a letter of credit from a bank with assurances from an applicant that the bank would not be legally bound.[11] In adding an issue to determine the circumstances surrounding the issuance of the bank letter, the Board stated:

> While a legally binding commitment is, o[f] course unnecessary to establish the availability of a proposed loan, the wording of [the] letter reflects that the applicant may have been attempting to merely obtain evidence of a commitment to satisfy the Commission without any regard to the efficacy of that commitment. To obtain and rely on such a commitment letter would clearly reflect on an applicant's candor and integrity. [37 FCC 2d at 798, 25 RR 2d at 624.]

The fact that Contract never obtained the signed "agreement" and therefore never filed it with the Commission, while material in the context of a misrepresentation issue, is immaterial to the question of his conduct. Because Contract's conduct is questionable, the Review Board is of the opinion, for the reasons advanced above, that the addition of an issue is warranted.

8. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed September 28, 1972, by WIOO, Inc., IS GRANTED, and that the issues in this proceeding ARE ENLARGED to include the following issue:

> To determine whether Alexander Contract knowingly solicited a false and misleading offer of purchase from James R. Scott, to be filed with the Commission in support of the application of Cumberland Broadcasting Company, and, in light of the evidence adduced, the effect thereof on the basic and/or comparative qualifications of Cumberland Broadcasting Company.

9. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the issue added herein SHALL BE on WIOO, Inc. and the burden of proof SHALL BE on Cumberland Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[11] See 37 FCC 2d at 797, 25 RR 2d at 623.

F.C.C. 73-106

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WOIC, INC. For Renewal of License of Station WOIC, Columbia, S.C.	Docket No. 19674 File No. BR-1220

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released February 1, 1973)

BY THE COMMISSION: COMMISSIONER HOOKS CONCURRING AND ISSUING A STATEMENT IN WHICH COMMISSIONER JOHNSON JOINS.

1. The Commission has before it for consideration: (i) the above-captioned license renewal application for Station WOIC, Columbia, South Carolina; (ii) an untimely petition to deny the aforenoted application;[1] and (iii) various responsive and related pleadings.

THE PARTIES

2. The instant renewal application reflects that WOIC, Inc., the licensee of standard broadcast Station WOIC, is wholly owned by Speidel Broadcasters, Inc., which also controls the corporate licensees of the following standard broadcast stations: WTMP, Tampa, Florida; WPAL, Charleston, South Carolina; WYNN, Florence, South Carolina; WSOK, Savannah, Georgia; and WHIH, Portsmouth, Virginia. Policy control over all of the above stations, including WOIC, is formulated and exercised by the Speidel corporation's president and majority stockholder, Joe Speidel, III. The operational, day-to-day direction of the stations, which are principally programmed and oriented to the licensee's concept of black audience needs, is exercised by local station personnel under the general supervision of Mr. Speidel and other Speidel corporate officials. In December 1970, Mr. Speidel became the sole stockholder of Speidel Broadcasters, Inc.; thereafter, control of these stations' licensee corporations was transferred, with Commission approval, to Mr. Speidel as an individual. Beginning in May of 1971, Speidel assigned, with Commission approval, the licenses

[1] As required, the WOIC renewal application was filed ninety days prior to the expiration of the preceding license term. See Rule 1.539(a). Pursuant to Rule 1.580(i), a petition to deny WOIC's application should have been filed on or before November 1, 1969; however, the instant petition to deny was not submitted until December 1, 1969. No adequate explanation for the delay is proffered by petitioner, nor is a waiver of Rule 1.580(i) requested. See *Report and Order* (Docket No. 18495), concerning broadcast license renewal applications, 20 FCC 2d 191, 192-93, 16 RR 2d 1512, 1514 (1969). Accordingly, the instant petition to deny will be dismissed. Due to the nature of the matters raised, however, we have elected to consider the petition on its merits as an informal objection filed pursuant to Rule 1.587. See *Universal Communications Corp.*, 27 FCC 2d 1022, 21 RR 2d 359 (1971).

for Stations WTMP, WPAL, WYNN, WSOK and WHIH to new corporate owners.[2]

3. Petitioner, the Columbia Citizens Concerned with Improved Broadcasting (Columbia Citizens), is an association comprised of several local citizens who have joined together for the purpose of examining and improving the broadcast service to the black community of Columbia, South Carolina. Many of the twelve identified members of Columbia Citizens are also officers or directors of a number of national and state-wide organizations, such as the American Civil Liberties Union of South Carolina, the South Carolina Council on Human Relations, Inc., and the American Friends Service Committee, which allegedly join petitioner in its request to deny the WOIC renewal application. In the same vein, affidavits, expressing general support of petitioner's allegations, have been submitted from nineteen leaders of Columbia's black community, who "join themselves as parties to the Petition to Deny".

THE PETITION TO DENY

4. Columbia Citizens predicates its request to deny the WOIC renewal application upon the station's alleged insensitivity to the needs and aspirations of blacks, its failure to inform, educate or serve as a means of self-expression for Columbia's black community, and its economic exploitation of that community. Specifically, petitioner contends that the licensee discriminates against blacks in its employment practices; that Station WOIC has made no serious effort to ascertain the needs of the community's black residents; and that the station's program service, which is highly commercialized, is unresponsive to the needs of blacks and other groups in the WOIC service area and varies in significant respects from the programming proposal set forth by the licensee in its 1966 renewal application. The petitioner further submits that the licensee has attempted to conceal its discriminatory practices and its deficient program service through the use of misleading and inaccurate job descriptions and program classifications. In the same vein. Columbia Citizens challenges Speidel's character qualifications, alleging improper conduct in the operation of his Tampa, Forida station, WTMP.[3]

DISCRIMINATION

5. According to Columbia Citizens, all of the employees of Station WOIC who exercise actual control of station policy and operation are

[2] On September 5, 1972, the licensee, as required, submitted a renewal application covering the forthcoming triennial license period (December 1, 1972, through December 1, 1975) and published and broadcast the prescribed local notice of this filing. While we could delay consideration of the 1972 renewal application until petitioner has had an opportunity to examine and comment thereon, the Commission believes that since a hearing is required in any event (see paragraphs 12 and 22, *infra*), the more appropriate procedure is to designate for hearing both renewal applications and require petitioner to raise any additional matters with respect to the 1972 application at the hearing. See Rule 1.229.

[3] The Station WTMP matter was set forth by petitioner in a February, 1971 supplement to its petition to deny. The licensee urges the rejection of the motion for leave to supplement and the tendered supplement, arguing that the allegations are both untimely raised and irrelevant to a resolution of the WOIC renewal application. Since the matter relates to the character qualifications of the licensee's majority stockholder (Speidel now holds an 83.3% stock interest), the Commission will grant the late-filed motion and consider the Columbia Citizens petition as supplemented. See *Western North Carolina Broadcasters, Inc.*, 8 FCC 2d 126, 10 RR 2d 78 (1967).

white, whereas blacks, who comprise a majority of the station's personnel, are neither permitted to participate in significant policy or programming decisions nor promoted to policy-making positions. Petitioner contends that the station's program director, Charles Derrick, a black, has no influence or control over programming policy; that another black employee, Paris Eley, who the licensee describes in its renewal application as a part-time news director and announcer, does not have the title of news director and has been refused permission to cover news events on behalf of the station; and that Reverend William Bowman, who reportedly also devotes time to the station's news operation, has, in fact, no news responsibilities.[4] Columbia Citizens also alleges that whenever policy-making positions become available, whites with inferior qualifications are hired to fill such vacancies. It is petitioner's contention that the foregoing discriminatory practices are not limited to the WOIC operation, but rather are common to all of the Speidel-owned stations.

6. In its opposition, the licensee denies any preferential promotion of whites at Station WOIC and maintains that Station WOIC, as well as the other Speidel stations, operates under a fair employment policy providing equal opportunities for blacks, both in initial employment and in advancement. In support thereof, the licensee points out that the personnel profile for the Speidel stations, including Station WOIC where black employees outnumber whites 10 to 8, reflects the employment of 53 blacks and only 36 whites.[5] As an example of the opportunities for blacks to achieve executive positions at the Speidel stations, the licensee notes that each of the program directors of these six stations is black and that blacks hold other responsible positions at Stations WHIH (general manager), WPAL (station manager), and WTMP (sales manager). With respect to WOIC's purported use of misleading and inaccurate job descriptions, Joe Speidel states in an affidavit that all personnel at his stations bear the responsibilities and duties commensurate with their particular positions. The WOIC general manager confirms Speidel's statement and specifically avers that Derrick's duties as the station's program director include: the responsibility for the quality, acceptability and presentation of commercial material; the assignment and maintenance of the announcers' work schedules; and the institution of all new programs, remote broadcasts and special sports programs. According to Brannon, the WOIC program director also consults with the station's general manager and public affairs director concerning program format changes and new program material. Derrick, by affidavit, attests to the foregoing description of his duties at Station WOIC. With respect to Eley's position at the station, Brannon submits that he personally assigned Eley the responsibilities of the station's news director on a part-time basis

[4] No affidavits in support of Columbia Citizens' allegations have been supplied from these WOIC personnel. Assertedly, the allegations are based upon statements made by Derrick and Eley in a discussion with petitioner concerning the operation, practices and policies of Station WOIC.

[5] In an affidavit tendered with the licensee's opposition pleading, Station WOIC's general manager, R. H. Brannon, avers that it is his practice to give first priority to black applicants whenever the hiring of a new employee is being considered. The affiant further states that all of the five employees, who have been added to the WOIC staff during the preceding three years, are black.

and requested him "to stay on top of local news events"; that Eley received a salary increase at that time; and that Eley's announcing duties prevented his full-time devotion to news gathering. According to Brannon, Eley is encouraged to cover news stories on his own initiative and, only on one occasion, was Eley requested by station management not to cover a particular news event.[6] Finally, Brannon describes Reverend Bowman's responsibilities to include the gathering of news pertaining to church activities and to items of a general religious nature for presentation by Station WOIC. Again, the WOIC employee, by affidavit, confirms the licensee's description of his station activities.

7. In reply, Columbia Citizens submits that its claim of discrimination against blacks is based upon a document which was sent to the Richland County Citizens Committee, Inc., by Derrick and Eley, who therein alleged the absence of blacks in policy-making positions at the Speidel stations and called for the establishment of a conscientious black news department and a separate black public relations department, headed by a black, to serve as liaison between Station WOIC and Columbia's black community. These employees also opined that several WOIC programs (*i.e.*, "Kaleidescope" and "Definition") were not relevant to the needs of the black community and that the station's criterion for hiring black salesmen (*i.e.*, a college degree with prior experience in the field) was unrealistic. Notwithstanding the licensee's description of its employees' responsibilities, petitioner posits that Derrick has little or no authority for planning or initiating programming; that consultation with Derrick concerning program matter is a mere formality before the station's general manager of public affairs acts in this regard; and that the public affairs director would be required to report to Derrick, rather than the reverse, if he was truly the station's program director. Citing Derrick's opinion of the Kaleidescope and Definition programs, Columbia Citizens asserts that Derrick's programming recommendations are ignored at Station WOIC. In petitioner's view, Brannon's unawareness of the fact that his instructions were misunderstood by Eley and "were not in fact being carried out", reflects a lack of intimacy between the parties and casts doubt upon Eley's real authority over news. According to Columbia Citizens, Reverend Bowman does not present news "in the sense of objective reporting of events".

8. The Commission does not believe that a substantial and material question of fact has been raised with respect to the licensee's employment practices. Petitioner's claim that whites with inferior qualifications are preferred over better qualified blacks is completely unsubstantiated. No facts or examples of any person allegedly discriminated against because of race is supplied by Columbia Citizens, and the Commission notes the significant absence of any complaints of discrim-

[6] That news event concerned a strike of hospital workers in Charleston, South Carolina, which is located approximately 120 miles from Columbia. Brannon informed Eley that the event could be more fully and economically covered by Station WPAL which would thereupon provide that coverage to Station WOIC. In his affidavit, Eley acknowledges his misunderstanding concerning his news title and confirms the accuracy of Brannon's description of his station responsibilities and the Charleston hospital strike incident. The affiant further avers that "I use my discretion as to what local news to cover and subject only to my other duties on the air and transportation, I do cover a lot of local material".

inatory conduct from station personnel, former employees, or job applicants. While some WOIC employees may disagree with the criterion used by the station to select its sales personnel, there is no indication that a different standard is employed with respect to prospective white salesmen or that the criterion used constitutes an artificial barrier to black employment. Moreover, the station's hiring pattern and employment profile belie a suggestion that blacks are confined to menial pursuits or are otherwise denied equal employment opportunities. The same is true with respect to the other Speidel stations. In short, petitioner's allegations lack the required specificity which would warrant exploration of the licensee's employment practices in an evidentiary hearing. See *Time-Life Broadcast, Inc.*, 33 FCC 2d 1050, 1059, 23 RR 2d 1165, 1176 (1972). In the same vein, petitioner's assertions that several WOIC employees do not exercise the responsibilities suggested by their job descriptions or titles are not only unsupported by factual evidence, but also refuted by the sworn statements of station officials which, in turn, are corroborated by the employees in question. In this regard, we note that the licensee is not required to bestow program autonomy upon its program director and that no curtailment of Eley's news-gathering activities on behalf of the station apparently resulted from the misunderstanding surrounding his job classification. See note 6, *supra*. In view of the foregoing, the Commission concludes that the licensee did not misrepresent the responsibilities and functions of its program director and its principal news-gathering personnel.

ASCERTAINMENT OF COMMUNITY NEEDS

9. In support of its contention that the licensee has inadequately surveyed the needs of Columbia's black community, Columbia Citizens principally argues that blacks comprise approximately 42% of the population served by Station WOIC; that of the 58 representatives of the area's business community who were consulted by means of a mailed questionnaire, only seven are blacks; that several of the 58 representatives are advertisers of Station WOIC; and that blacks comprise about one-half of the 13 area residents who were considered by virtue of their multiple affiliations to be especially qualified to speak on community needs and who were personally interviewed by the licensee. Columbia Citizens also submits that the narrative description of community needs set forth by the licensee in the subject renewal application appears to be based largely upon a report entitled "Opportunity and Growth in South Carolina 1968–1985," which allegedly gives little attention to the black community's particular needs, tastes, and desires as understood by black leaders. In the same vein, petitioner charges that neither the WOIC public affairs director, who it believes is in charge of ascertaining Columbia's needs and interests on behalf of the licensee, nor any other white policy-making personnel of the licensee has any substantial involvement with blacks or their activities. In petitioner's view, the licensee has not sampled an appropriately broad spectrum of community opinion for a municipality the size of Columbia.[7] Columbia Citizens further contends that two of

[7] Allegedly, the population of Columbia totaled 133,500 persons in 1969.

the 13 listed community spokesmen deny having been personally interviewed by any representative of Station WOIC.

10. With respect to the alleged inadequacy of its ascertainment of community needs, the licensee argues that Columbia Citizens has disregarded the continuing relationship, which the station's personnel maintains with the community and its organizations and which provides the licensee with much useful information concerning the community's needs and interests. As evidence of the civic involvement of station personnel, the licensee points to Exhibit 1A of the subject renewal application which sets forth approximately 28 area organizations, 14 of which are reported to be primarily concerned with needs and interests of Columbia's black community.[8] The licensee also maintains that its community ascertainment efforts were not limited to the 58 questionnaire responses and the 13 personal interviews challenged by petitioner. Rather, discussions were conducted with station personnel, a majority of whom are black, and additional questionnaires were distributed to WOIC personnel who were to use them in interviewing as many Columbia citizens as possible during their daily station activities. According to the licensee, the community needs and interests delineated in its Exhibit 1B were elicited from the foregoing ascertainment efforts and the personal and telephone interviews which were also conducted by the station's general manager and public affairs director. With respect to the two community leaders who allegedly were not personally interviewed, the WOIC public affairs director explains that the questionnaire was used as a guide for the personal consultations; that the individuals, both of whom are members of the Columbia Citizens association, visited the station and were queried by her with respect to the survey; and that these leaders, instead of responding to the questionnaire at that time, left with copies of the questionnaire which they subsequently completed and returned to the station. Since station personnel had spoken directly with these leaders, they were included in the listing of personal interviews.[9]

11. The licensee's ascertainment surveys were conducted and the subject renewal application was filed with the Commission prior to the promulgation of the proposed *Primer*, which was intended to clarify and provide guidelines for the ascertainment of community problems. On February 23, 1971, the Commission released its *Report and Order* adopting the *Primer*. See 27 FCC 2d 650, 21 RR 2d 1507. Among other things, the *Primer* requires that broadcast applicants, including licensees seeking renewal of their authorizations, consult with a representative cross-section of community leaders and members of the general public in the area to be served and design programming re-

[8] The licensee notes that Miss Cynthia Gilliam, its public affairs director, is and has long been substantially involved in public service activities of deep concern to Columbia's black residents and that the submitted portfolio of her associations and accomplishments covers many areas. In addition, Miss Gilliam, by affidavit, denies that she is in charge of the licensee's community ascertainment efforts. The affiant further states that she does not have the authority to make the actual determinations regarding programming and program policy at Station WOIC—that authority is the province of the station's general manager under the policy direction of the licensee's owners.

[9] In its reply, Columbia Citizens renews its argument that the licensee has contacted only a handful of blacks, despite the substantial number of blacks residing in its service area, and that WOIC's survey efforts, individual or collectively, do not comport with the requirements either set forth by the Commission in its proposed *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 20 FCC 2d 880 (1969), or established in the Commission's pronouncements and caselaw since *Minshall Broadcasting Company, Inc.*, 11 FCC 2d 796, 12 RR 2d 502 (1968).

sponsive to those ascertained community problems as evaluated. Since the *Primer* contemplates a person-to-person dialogue between the applicant and the persons representing the significant groups that comprise the community, only principals or management-level employees of the applicant can conduct the required personal interviews, whereas greater latitude is afforded an applicant in its consultations with members of the general public, provided that these interviews are generally distributed throughout the station's service area. Measured against these standards the licensee's ascertainment surveys are clearly inadequate. Nor do they fare better when tested by the standards in effect at the time the WOIC renewal application was filed.

12. In our August 22, 1968 Public Notice entitled "Ascertainment of Community Needs by Broadcast Applicants," FCC 68–847, 33 Fed. Reg. 12113, 13 RR 2d 1903, we stated that applicants should supply "full information" on the steps taken to become informed of the real community needs and interests of the area to be served and that the range of group leaders consulted should be representative of the various community elements—"public officials, educators, religious, the entertainment media, agriculture, business, labor, professional and eleemosynary organizations and others who bespeak the interests which make up the community." A necessary part of the ascertainment process is also the surveying of the general listening public who will receive the station's signals. See *Report and Statement of Policy Re: Commission En Banc Programming Inquiry*, FCC 60–970, 25 Fed. Reg. 7291, 20 RR 2d 1901, 1915. The licensee identified contacts with representatives of Columbia's business community and with 13 area leaders; however, the Commission is not persuaded that these contacts, standing alone, represent a fair, cross-sectional sampling of the groups, leaders and citizens that comprise the community of Columbia. See *Santa Fe Television, Inc.*, 18 FCC 2d 741, 16 RR 2d 934 (1969). While the licensee argues that these formal survey consultations should be viewed in conjunction with the continuing participation of Station WOIC and its personnel in the affairs and activities of the Columbia community, the latter efforts are not sufficiently detailed to show a meaningful investigation of the community's needs by this method [10] and to support the required conclusion that the licensee, through its various ascertainment efforts, has acquired a reasonable knowledge of its community's needs and has designed its program proposal in response thereto. See *United Television Company, Inc.* (*WFAN–TV*), 18 FCC 2d 363, 16 RR 2d 621 (1969); *Vernon Broadcasting Company*, 12 FCC 2d 946, 13 RR 2d 245 (1968). Therefore, the Commission concludes that an evidentiary inquiry is warranted so that the licensee can fully demonstrate its efforts to ascertain the community needs and interests of the areas served by Station WOIC and the means by which it proposed to meet those needs and interests.[11] See *WPIX, Inc.*

[10] Similarly, the survey efforts of these employees, as well as the personal interviews conducted by the station's management-level personnel, suffer from a lack of specificity. See *Southern Minnesota Supply Co. (KYSM)*, 12 FCC 2d 66 (1968).

[11] In this regard, the licensee will be permitted to demonstrate its ongoing efforts to remain conversant with and attentive to the community's problems throughout the period when the original renewal application was in deferred status. *Cf. Chuck Stone* v. *FCC*, D.C. Cir. Case No. 71–1166, decided June 30, 1972, 24 RR 2d 2105, rehearing denied September 1, 1972, 25 RR 2d 2001; *WKBN Broadcasting Corp.*, 30 FCC 2d 958, 974, 22 RR 2d 609, 625–26 (1971), reconsideration denied FCC 72–1002, released November 15, 1972.

(*WPIX*), 20 FCC 2d 298, 17 RR 2d 782 (1969); *United Television Company, Inc.* (*WFAN–TV*), *supra*. We do not believe, however, that a misrepresentation issue concerning the licensee's survey contacts is warranted. The WOIC public affairs director's explanation concerning the listing of the two Columbia Citizens members with the other community leaders with whom the licensee had directly spoken, is not contradicted and demonstrates a reasonable predicate for the licensee's action. Contrary to petitioner's opinion, this matter does not adversely reflect upon the licensee's requisite qualifications. See *RKO-General, Inc.*, 33 FCC 2d 664, 23 RR 2d 930 (1972).

PROGRAM SERVICE

13. Generally, Columbia Citizens submits that Station WOIC primarily caters to the culture, the habits and the stereotypes of the segregated past by presenting a steady diet of soul and gospel music and makes no countervailing effort to contribute to the communication of liberating information, education and ideals.[12] Columbia Citizens acknowledges that, upon request, station time is made available to organizations such as the Urban League and NAACP; however, the petitioner charges that the licensee neither participates in any significant manner in the planning and preparation of these presentations nor develops programming addressed to community needs with its station personnel. It is the station's policy, opines petitioner, to run a low-cost operation by presenting a few discussion programs produced by others without cost to it and a "rip-and-read" news operation that provides very little local news and almost no local news of particular concern to Columbia's black population.[13] The petitioner further contends that the station does not, as claimed, devote 65% to 70% of its newscasts to local and regional events; that the description of a number of the programs set forth in the station's program schedules are misleading; and that only three of the fourteen public service type programs promised in Station WOIC's 1966 renewal application were presented during the composite week.

14. The licensee denies that its programming is unresponsive to the needs of its community as a whole or to Columbia's sizable black citizenry and, in support thereof, the licensee points to a number of typical programs broadcast during the last year of its past license term, such as:

[12] In Exhibit 1C of the 1969 renewal application, the licensee detailed several of the ascertained community problems and the public affairs programs it proposes to broadcast during its next license term to meet those problems. No specific allegations are directed by petitioner to the community responsiveness of the programming material set forth in this exhibit which, in any event, will be explored under the specified *Suburban* issue. Accordingly, we will herein consider petitioner's allegations in the context of the programming which Station WOIC presented from 1966 to 1969.

[13] In support of the latter allegation, petitioner submits an affidavit from several of its members who, as leaders of black community organizations, have regular occasion to request station coverage of events and issues of alleged importance and concern to Columbia's black community. The affiants state that they have repeatedly been informed by station personnel that no news reporters are available and that the news items should be given to the announcer on duty at the studio. It is the affiants' belief that Station WOIC does not maintain a news department and has no news reporters.

"Memorandum"----	The official 15-minute, weekly program of the Columbia Urban League. Approximately 85% of the programs utilize a discussion format hosted by the League's executive director and, aside from programs and projects of the organization, are devoted to disseminating information regarding housing, employment opportunities, voter registration and educational projects.[14]
"Definition"-------	This is a discussion program composed of a panel of area high school youth and a professional moderator. The program is presented on a weekly basis during a 15-minute time segment and presents comments from students of different sex, race, religion and economic background.[15]
"Employment Guidance Center Program" (formerly, "Good Advice").	This program has been presented for three years and is now broadcast for a 30-minute period on Saturday mornings. The program, moderated by an employment counselor from the organization, consists of interviews and discussions with prominent area businessmen, industrialists and professionals regarding their firms' educational requirements for employment. Information concerning the different types of employment available in the area and the salary range, fringe benefits and similar areas of interest to a prospective employee is also aired during this program.
"Palmetto Profiles" (formerly "Columbia Close-Up").	A 15-minute, weekly interview-discussion program featuring the executive director of a Planned Parenthood organization for Richland and Lexington Counties. Participants on this program include doctors, lawyers, judges, OEO officials and other community leaders concerned with improving the health and welfare of the area's residents.
"Homemaker Program."	This is a series of five, 5-minute programs presented weekly in cooperation with the Home Economics Division of the South Carolina Department of Education. Programs in this series provide basic information on such topics as pre-natal care, obtaining the most dollar and food value from food stamps and insurance values.
"Senior Citizens Program."	A 15-minute, weekly program featuring the coordinator of the Foster Grandparent's Project located at Pineland, a state training school and hospital. The program is designed to disseminate information of value to the area's senior citizens and guests have included physicians specializing in geriatrics and representatives of the local Social Security Office and the state employment service.

[14] A similar program, "Swing into Action," which is also presented under the aegis of the Urban League, dealt with black economic development. Other weekly programs devoted to apprising blacks of the services rendered by Columbia's legal aid agency ("Your Neighborhood Lawyer") and to explaining the municipal, county, state and national governmental structure, the electoral college and the proper use of voting machines (Voter Education Project—"V.E.P. Report") have also been aired by Station WOIC.

[15] According to the WOIC general manager, the format of this program is subject to modification. Due to difficulties encountered in arranging an appropriate student panel on a regular basis during the school year, it is sometimes necessary for the program moderator to present music accompanied by a narrative description.

The licensee's past programming has also included a special 30-minute, panel discussion program on juvenile crime with a judge and the chief correctional officer for the Richland County Family Court, a police captain, and the public relations director for the Richland County Citizens Committee; and a weekly, 30-minute program that was aired for a three-month period in 1969 and that dealt with equal

109-026—73——16

job opportunities. On a seasonal basis, Station WOIC has also presented a program, consisting of news, discussions and interviews by students and faculty members of South Carolina State College, and a program containing advice on filling out federal tax forms and other pertinent information relating to the requirements and services of the Internal Revenue Service.[16]

15. Turning to petitioner's more specific allegations, the licensee contends that only two of the fourteen specifically mentioned programs which it planned to present during its 1966–1969 license term were not undertaken during that period, namely, a series on good citizenship and a series dealing with releases from various governmental agencies and public service institutions.[17] The licensee further maintains that six of the promised programs were presented under the same or different titles during the composite week and that another program was pre-empted by a special local program on the date selected by the Commission. According to the licensee, the remaining programs or substitutes of similar service characteristics were aired during the license term. With respect to the allegations addressed to its news operation, the licensee states that, as in the case of many stations of its size, it does not maintain a full-time news department. Rather, it principally relies upon the news-gathering activities of Eley and Reverend Bowman (see para. 6, *supra*), whose efforts are complemented by the remaining station members and announcers who, as part of their regular duties, are also alert to newsworthy happenings in the community and are available to cover local news events, if necessary. In this manner, station personnel covered a school problem in Lexington, South Carolina, a disturbance on the campus of South Carolina State College, and a highway controversy in Columbia. The station also receives many requests from various community groups for coverage of future events and activities and, in its general manager's opinion, the station does its best to provide the requested news coverage and at the same time, afford airtime to all of Columbia's community groups with particular emphasis to those dealing with the community's black citizens. Regarding its estimate of the amount of airtime to be devoted to local and regional news events, the licensee submits that 42% of the news broadcast during the composite week was clearly related to local events [18] and that the inclusion of the local news, which was incorporated within the station's other newscasts, would bring Station WOIC's local news coverage up to at least 65% during that selected period.

16. In its reply pleading, Columbia Citizens reiterates its objections to Station WOIC's program service and submits, for the first time, that repeated logging irregularities have made it impossible to determine

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[16] In addition, the station's public affairs director identifies those members of the Columbia Citizens Association, who have utilized the broadcast facilities of Station WOIC on behalf of their other organizations and who have been guest participants on such public affairs programs as "Palmetto Profiles" and "Employment Guidance Center".

[17] Reportedly, the subject matter of these projected series was elsewhere treated in the station's program service.

[18] This figure was calculated by adding the broadcast time of the programs that dealt with news of a predominately local nature, such as, church and civic news, funeral announcements, and meetings, to the aggregate broadcast time of the newscasts entitled "South Carolina News Roundup."

the public affairs programs the licensee actually presented during the composite week. Columbia Citizens points out that on four of the five weekdays during the 8:00 to 8:30 p.m. time period, the licensee scheduled multiple public affairs programs at the same time without indicating which, if either program, was presented. Columbia Citizens further submits that several programs, not presented in cooperation with a *bona fide* educational institution, are inaccurately listed on the logs as educational programs, and that a U.S. Army recruiting program and a National Guard program are wrongfully classified as public affairs programs.[19] It is also revealed for the first time in this pleading, that petitioner monitored Station WOIC's programming for a full week in November of 1969. For a variety of reasons, however, only one day's monitoring, that of November 21, 1969, provides the basis for petitioner's allegations that the news broadcast by Station WOIC amounted to 4.2% of its total airtime, rather than 8.7% as claimed in the licensee's composite week analysis and that local and regional news only amounted to 45.3% of the news broadcast by Station WOIC, exclusive of weather forecasts and temperature checks.[20] Finally, Columbia Citizens argues that Station WOIC neither broadcasts nor has the capacity to present any local news of a type which would require an affirmative effort on the part of the station's staff. In support thereof, petitioner submits the affidavits of two of its members, Dewey Duckett, Jr., and Isaac W. Williams, who stated therein that Station WOIC does not cover or report upon events of interest to the black community, such as the regular public meetings of the governing board of directors of the Lexington-Richland Economic Opportunity Agency, the Columbia City Council, and the Richland County school board; that Mr. Williams, as field director for the South Carolina NAACP, was not interviewed by the station concerning his organization's opposition to the Judge Haynesworth nomination to the U.S. Supreme Court and its reaction to the Senate's disapproval of the appointment; and that news affecting Columbia's black residents is often not covered by Station WOIC because of its lack of news staff.[21] On the basis of its monitoring, Columbia Citizens also faults Station WOIC for not reporting the visit of Brig. Gen. F. Davison, one of the Army's highest ranking black officers, to nearby Fort Jackson and for not promptly reporting the Senate's rejection of the Judge Haynesworth appointment.

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[19] It is also suggested by virtue of the station's request for a listing of the participants on the Employment Guidance Center's program (see para. 14, *supra*) that the licensee has little or no control over the content of Station WOIC's public affairs programs. Such inference is not warranted, and since petitioner cites no specific instance where the licensee has been remiss in this regard, this unsupported accusation will not be considered further.

[20] In petitioner's opinion, reliance cannot be placed upon the sample program logs in analyzing the station's newscasts since the monitoring disclosed that the hourly and half hourly news headline programs are not always one minute in duration as scheduled and since the content of the station's news programs (*i.e.*, local, regional, and national) is not depicted on the logs. Based upon its analysis of the sample logs, Columbia Citizens further submits that the amount of broadcast time devoted to news fell short of the 10 hours and 15 minutes proposed in the station's 1966 renewal application.

[21] Also tendered with petitioner's reply pleading is an affidavit from "a regular listener of WOIC" who cites the station for its failure to inform listeners of programs of vital concern to the poor, such as social security, welfare benefits and rights, and housing.

17. As the Commission has pointed out on numerous occasions, the decision as to the choice of a station's entertainment format is in the sound discretion of the licensee. *E.g., KNOK Broadcasting, Inc.*, 29 FCC 2d 47, 21 RR 2d 960 (1971). Here, as admitted by Columbia Citizens, the entertainment format selected by Station WOIC does have wide support among Columbia's black residents, and we are not convinced that the Commission should interfere and require the licensee to replace its present entertainment format. See *Interstate Broadcasting Company, Inc.*, 35 FCC 2d 737, 24 RR 2d 874 (1972). Nor are we persuaded by petitioner's general allegations that the station's informational programming is insensitive to the community's needs. See *Black Identity Education Association*, FCC 72–378, 21 RR 2d 746. On the contrary, an examination of the illustrative public affairs programs listed in the WOIC renewal application discloses programs clearly addressed to community problems, including several programs specifically attentive to the needs and interests of Columbia's black citizenry. See paragraph 14, *supra*. Programs dealing with black problems in the areas of civil rights, housing, employment opportunities, social welfare, civics and economic development have apparently been broadcast by Station WOIC.[22] That petitioner, and even some station employees, might regard certain individual programs as irrelevant to the interests of the black community does not raise an issue justifying our intrusion in this area. See *WKBN Broadcasting Corp., supra*, 30 FCC 2d at 969–71, 22 RR 2d at 621–22. To belittle the station's public affairs programming on the basis of the licensee's expenditures for these programs is not warranted, especially where, as here, that programming as a whole appears responsive to the community's needs and interests. Moreover, the Commission does not consider the relationship between revenues and program expeditures as a factor in evaluating the adequacy of a licensee's public affairs programming, albeit a request to that effect is contained in a current rule making petition (RM–1837). To apply any new standards in this regard on a case-by-case basis, without first subjecting them to the comprehensive consideration inherent in the rule making process,

[22] Two 14-minute programs listed on the program logs for the composite week were misclassified by the licensee. The obviousness of the error and the fact that the misclassifications did not appreciably enhance the amount of broadcast time devoted to public affairs programming negate an inference that these errors were designed to deceive the Commission. See *Scripps-Howard Broadcasting Co.*, 31 FCC 2d 1090, 1104–05, 22 RR 2d 1069, 1086 (1971). As noted by Columbia Citizens, the licensee was remiss in listing the actual starting time of the programs on its pre-typed logs and in making appropriate corrections and notations as required by Rule 73.112. These shortcomings, however, do not raise a substantial question requiring exploration in a hearing. For the most part, the public affairs programs set forth in the 1966 renewal application were undertaken by the licensee and, according to the sworn statement of the station's public affairs director "WOIC showed [six] of them in its composite week for the 1969 application." This representation is not undermined by the licensee's failure to note the programs' actual starting times, which Columbia Citizens initially raised *in its reply pleading*. Similarly, petitioner's claimed confusion concerning what programs were aired during the weekday 8:00–8:30 p.m. time segment can easily be dispelled by reference to Rule 73.112(a)(1)(ii), which states in pertinent part that: "[I]f programs are broadcast during which separately identifiable program units of a different type or source are presented, and if the licensee wishes to count such units separately, the beginning and ending time for the longer program need be entered only once for the entire program. The program units which the licensee wishes to count separately shall then be entered underneath the entry for a longer program, with the beginning and ending of each such unit, and with the entry indented or otherwise distinguished so as to make it clear that the program unit referred to was broadcast within the longer program."

is not appropriate. See *Aliaza Federal de Pueblos Libres*, 31 FCC 2d 557, 22 RR 2d 860 (1971).

18. Petitioner's principal objection to the news service of Station WOIC appears to be that the station has no full-time news department or reporters. Initially, we must note that our concern in this regard "is only that the station show that it has employed sufficient personnel to assure the presentation of an amount of local, national and international news which is commensurate with the needs of the community." See *Letter to Mr. Richard A. Beserra*, FCC 72–965, 25 RR 2d 777, 780. Here, the licensee has indicated the general manner by which it becomes acquainted with news happenings of concern to its community and has cited several instances where its personnel, despite their other station duties, have been utilized to cover and report on events which the licensee deemed newsworthy. Petitioner views such coverage as sporadic and without continuity; however, these objections do not raise a material question regarding the station's ability to inform its listeners. Columbia Citizens also urges the Commission to fault the licensee for not immediately interrupting its programming to report the rejection of Judge Haynesworth's appointment [23] and for not covering various other news events relevant to Columbia's black community. A licensee has wide discretion in the area of programming and, in the absence of extrinsic evidence that the licensee has falsified, distorted or suppressed news, the Commission will not substitute its judgment for that of the licensee in determining what news is of prime interest to its listening audience and the manner in which is should be presented. See *Universal Communications Corp.*, *supra*, 27 FCC 2d at 1025–26, 21 RR 2d at 364–65. Again, we will not interfere with the exercise of the licensee's news judgment where, as here, there is no showing that the licensee consistently and unreasonably ignored important matters of public concern .Compare *Radio Station WSNT, Inc.*, 27 FCC 2d 993, 21 RR 2d 405 (1971). Based upon its analysis of Station WOIC's sample logs, petitioner questions whether the licensee has, in fact, fulfilled its earlier promises with respect to the amount of airtime allocated to news programs, particularly local and regional news. We have carefully examined the program logs covering the composite week and we find that both the petitioner and the licensee have apparently failed to include in their calculations the weather reports and temperature announcements which Station WOIC broadcast during the period in question. See notes 1 and 4 of rule 73.112. The consideration of this material resolves the claimed discrepancies relating to the licensee's news broadcasts.[24] In view of the foregoing, the Commission believes that no hearing issue is appropriate with respect to the program service presented by Station WOIC during its past license term.

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[23] According to petitioner, the result of the Senate's vote was first carried by the A.P. newswire at 1:08 p.m.; nearly one hour later, Station WOIC reported this event in its regularly scheduled 2:00 p.m. news program.

[24] By virtue of a single day's monitoring of Station WOIC, petitioner suggests that the sample logs inaccurately portray the station's program service and cannot be relied upon. We disagree. To measure or predict a station's performance on the basis of a single day of operation is not warranted. Moreover, licensees are not required to satisfy their projected programming percentages on a daily or weekly basis. See *Tri-Counties Communications, Inc.*, 31 FCC 2d 83, 22 RR 2d 678 (1971).

COMMERCIAL PRACTICES

19. Columbia Citizens accuses Station WOIC of devoting an excessive amount of time to commercial announcements and of exceeding its limitation of 25% commercial matter in any 60-minute segment on several occasions during the preceding license term. Petitioner further criticizes the licensee for increasing from 25% to 30% the maximum percentage of commercial matter in normal hours and for permitting up to 20 minutes (33⅓%) during two three-hour periods on Thursdays, Fridays, and Saturdays and at all times during election campaigns. The licensee opposes the specification of an issue in this regard, arguing that the preceding license renewal application, as amended on December 30, 1966, reflects that 18 minutes was the maximum amount of commercial matter which it proposed to normally allow each hour and that the only change in its commercial policy, the substitution of Wednesday for Saturday as a heavy traffic day, is responsive to present buying habits in its market and does not represent a substantial variance from Station WOIC's prior commercial practices.

20. Examination of the subject renewal application reflects that the licensee exceeded its 18-minute commercial ceiling in 8 of the 124 hourly segments of the composite week and that none of the overages exceeded 20 minutes. The licensee specifically stated that deviations from its normal commercial policy may occur under certain circumstances. It is not alleged that the eight overages did not fall within the specific circumstances provided for by the licensee. Nor has petitioner shown that Station WOIC's commercial policy contravenes our most recent pronouncements regarding commercial standards.[25] See *Chicago Federation of Labor and Industrial Union Council*, FCC 72–1079, released December 8, 1972. No substantial and material question has been raised concerning the station's commercial practices and no issue is, therefore, warranted. See *Mahony Valley Broadcasting Corporation*, FCC 72–1001, released November 15, 1972.

THE STATION WTMP MATTER

21. Columbia Citizens filed a supplement to its petition to deny on February 16, 1971. See note 3, *supra*. As part of that submission, the petitioner attached affidavits from two representatives of the University of South Florida student government charged with the responsibility of collecting contributions for the Disadvantaged Student Loan Fund. The affiants state that in May of 1970 they were personally informed by the Station WTMP general manager that the money originally collected from "Soul Night",[26] which had been spent, would

[25] While recognizing the right of a broadcaster to exercise his reasonable judgment in terms of his particular situation, the Commission expressed general approval of a commercial policy which specifies a normal commercial content of 18 minutes in each hour with stated exceptions permitting up to 20 minutes per hour during no more than 10% of the station's total weekly broadcast hours and with a further exception allowing up to 22 minutes where the excess over 20 minutes is purely political advertising. See Report No. 8842, released February 13, 1970, concerning the WXCL standards.

[26] On July 20, 1968, Station WTMP sponsored this promotion, whose proceeds, after expenses, were to be directed to "the WTMP Scholarship Fund to be divided between Hillsborough, Polk, and Pinellas Counties".

be replaced and that the station would give $525 to their fund by June 12, 1970. According to the affiants and a former announcer at Station WTMP, none of the money collected (approximately $1,150) was ever donated to any scholarship fund, including the affiants' Disadvantaged Student Loan Fund. It is alleged that the "Soul Night" proceeds were used to repair damage caused by a fire at the station's offices. Petitioner also contends that in mid-1968 Station WTMP defrauded one of its advertisers, James Brown Productions, by airing only $600 worth of the $900 in spot advertising it purchased and by mis-applying the remaining $300 to the account of the advertiser's former manager, George Grogan, against whom the station had a disputed claim. According to petitioner, the advertiser inquired at that time concerning the amount of spot announcements presented on its behalf and was informed by the salesman concerned that $900 worth of advertising was broadcast.[27] It is further alleged that this salesman, who subsequently became the general manager at Station WTMP, had earlier been accused by the station's management of improperly withholding money from his station accounts. Affidavits, in support of these contentions, are supplied from the station's former program director-announcer and its former traffic manager.[28]

22. The licensee does not dispute the allegations raised by Columbia Citizens. Rather, it argues that "[N]one of the allegations is relevant to a resolution of the WOIC renewal application." We disagree. The acts complained of arose in the operation of a broadcast station, whose corporate licensee was controlled by WOIC's principal stockholder.[29] It is well established that serious misconduct in the operation of a broadcast facility reflects upon the basic qualifications of the licensee and its principals and can be considered in other Commission proceedings involving those same persons. *E.g., Faulkner Radio, Inc.*, 15 FCC 2d 780, 15 RR 2d 285 (1968); and *Walter T. Gaines (WGAV)*, 25 FCC 1 387, 17 RR 165 (1958), reconsideration denied 26 FCC 460, 17 RR 185 (1959). Mr. Speidel's awareness of or involvement in these matters is not apparent from the pleadings before us; nor can we determine at this time whether Speidel paid insufficient attention to the operation of Station WTMP or unreasonably delegated his responsibilities and obligations to other station officials. In any event, however, the

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[27] In August, 1970, the advertiser requested an accounting of the money it spent at Station WTMP in 1968. By letter of August 18, 1970, a copy of which is submitted by petitioner, the Speidel corporation's comptroller replied that "we are unable to supply the information you request from the station records."

[28] The remaining allegations, which are based on the statements made by three former Station WTMP announcers, largely relate to their terms of employment and rates of compensation while at the station—matters in which the Commission has declined to interfere, absent a clear showing that the licensee's dealings with its employees has contravened law or adversely affected the program service rendered to the public. Here, the required showing has not been proffered. Petitioner's other allegations, which are again based upon the uncontroverted statements of these former employees, do not raise a material and substantial question of impropriety on the part of the station or its management. Significantly, there is no showing that the actions complained of were unreasonable or impermissible. Compare *KSID, Inc.*, 22 FCC 2d 833, 18 RR 2d 1187 (1970); and *United Television Company, Inc. (WFAN–TV)*, *supra*, 18 FCC 2d at 365–67, 16 RR 2d at 624–28. Further consideration of the foregoing matters does not appear warranted at this time.

[29] At the time of the alleged misconduct, the corporate licensee of Station WTMP was wholly owned by Speidel Broadcasters, Inc., whose 99.45% stockholder was Joe Speidel, III. According to the licensee, Speidel, who was the president of the Station WTMP licensee, "is actively engaged in the supervision of each of [his] stations, and visits several of the stations every month." See para. 2, *supra*.

ultimate responsibility for the alleged wrongdoing of Station WTMP's officers and employees clearly rests upon this major principal. See *Star Stations of Indiana, Inc.*, 19 FCC 2d 991, 993, 17 RR 2d 491, 493–94 (1969); *Robert D. and Martha M. Rapp*, 12 FCC 2d 703, 13 RR 2d 32 (1968). In view of the seriousness of the questions raised [30] and the licensee's virtual reticence with respect thereto, the Commission is constrained to specify appropriate issues to resolve those questions at a hearing.

ULTIMATE CONCLUSION

23. In the judgment of the Commission, substantial and material questions of fact have been raised with respect to the adequacy of the licensee's efforts to ascertain the community needs and interests of the areas served by Station WOIC and the means by which it proposed to meet those needs and interests. The pleadings also raise serious questions concerning misconduct at a station controlled by the licensee's major principal. The Commission is, therefore, unable to make the statutory finding that a grant of the renewal application for Station WOIC is consistent with the public interest, convenience, and necessity, and is of the opinion that the foregoing matters should be explored in an evidentiary hearing.

24. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned license renewal applications, ARE DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether standard broadcast Station WTMP, while under the ownership and control of Joe Speidel, III, engaged in fraudulent billing practices.

(2) To determine, with respect to the aforenoted period, the facts and circumstances surrounding the Station WTMP promotion, "Soul Night", and the use of the proceeds therefrom.

(3) To determine whether, on the basis of the facts adduced in response to the foregoing issues, Joe Speidel, III, an officer and principal of the corporate licensees of Stations WTMP and WOIC, participated in or failed to exercise adequate control or supervision over the management and operation of Station WTMP and, if so, whether said actions adversely reflect upon the qualifications of WOIC, Inc., to be a Commission licensee.

(4) To determine the efforts made by WOIC, Inc., to ascertain the community needs and interests of the areas served by Station WOIC and the means by which the licensee proposed to meet those needs and

[30] As we noted in our Memorandum Opinion and Order concerning fraudulent billing practices, "misrepresentations by licensees in any and all billing practices . . . certainly reflects adversely on the qualifications of a licensee and, to a degree, on the industry as a whole. The public interest, convenience and necessity clearly require reasonable ethical business practices in the industry—specifically on the part of individual broadcasters. It is within the Commission's authority, and is its responsibility, to take whatever action is appropriate to check these practices, which essentially amount to the use of broadcast facilities for fraudulent purposes." 23 FCC 2d 70, 71, 19 RR 2d 1506, 1508 (1970). Also see Public Notice, FCC 72–1090, released December 7, 1972. Of similar import is the possible misappropriation of proceeds from "Soul Night" and the resulting deception upon the public.

interests during the period the 1969 application was in deferred status (*i.e.*, December 1, 1969 through December 1, 1972).[31]

(5) To determine whether, in light of all the evidence adduced pursuant to the foregoing issues, a grant of the application for renewal of license of Station WOIC would serve the public interest, convenience and necessity.

25. IT IS FURTHER ORDERED, That, the petition to deny and supplement thereto, filed by the Columbia Citizens Concerned with Improved Broadcasting, IS DISMISSED; and that considered as an informal objection filed pursuant to Rule 1.587, the aforementioned petition, IS GRANTED to the extent indicated above and IS DENIED in all other respects.

26. IT IS FURTHER ORDERED, That, the motions to expedite consideration of renewal application, filed by WOIC, Inc., ARE DISMISSED as moot.

27. IT IS FURTHER ORDERED, That, the Columbia Citizens Concerned with Improved Broadcasting is made a party to the hearing ordered herein.[32]

28. IT IS FURTHER ORDERED, That, in accordance with Section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence shall be on the party respondent as to issues (1), (2) and (3). The burden of proceeding with respect to issue (4) and the burden of proof with respect to all of the issues herein shall be upon WOIC, Inc.

29. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, WOIC, Inc., and the party respondent, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty (20) days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the Order.

30. IT IS FURTHER ORDERED, That, WOIC, Inc., shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by Section 1.594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[31] See note 11, *supra.*

[32] Several members of Columbia Citizens are purportedly acting in a representative capacity; however, their authority to do so has not been clearly established. Accordingly, we have not named these organizations as parties to the instant hearing. Compare *Radio Station WSNT, Inc., supra.* Similarly, we have declined to accord party status to the 19 community leaders who, in affidavits attached to petitioner's reply pleading, merely "generally support the allegations made by Petitioners against WOIC [and] believe them to be true". Under these circumstances, we believe the future participation of these individuals and organizations in this hearing should be governed by Rules 1.223 and 1.225.

CONCURRING STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS IN WHICH COMMISSIONER NICHOLAS JOHNSON JOINS

In Re Renewal of WOIC (AM)—Speidel Broadcasters, Inc.

Although I concur in the result reached today by my fellow Commissioners, it is my position that issues should have been added to the Designation Order, i.e., whether the station had engaged in discriminatory practices toward the minority community within its service area and failed to serve them thru its programming; and whether the employees of the station whose official titles bespoke of the exercise of power, discretion, and policy making, e.g., program director, news director, etc. were allowed to enjoy and exercise their duties or whether they were effectively or constructively enjoined from the exercise thereof by direction of the principals of the licensee.

However, it is my understanding that such issues may be brought up at the hearing as corollary matters to the "ascertainment" issue, contained in the Designation Order, and I trust that these issues will be developed at the hearing.